ARNOLD SCHWARZENEGGER, GOVERNOR

OFFICE OF ADMINISTRATIVE LAW

California Regulatory Notice Register

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PROPOSED ACTION ON REGULATIONS

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Time-Dated Material

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSITION 65

SUMMARY OF REGULATORY ACTIONS

PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSON

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the amended conflict of interest codes of the following agencies:

CONFLICT OF INTEREST CODE

AMENDMENTS

STATE AGENCY:
Public Employment Relations Board

A written comment period has been established commencing on **April 1, 2005**, and closing on **May 16, 2005**. Written comments should be directed to Adrianne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed amendment to the conflict of interest code will be submitted to the Commission's Executive Director for review, unless any interested person, or his or her duly authorized representative, requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed amendment will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, pursuant to Government Code section 87302, employees who must disclose certain investments, interests in real property, and income.

The Executive Director or the Commission, upon his or her own motion or at the interest of any interested person, will approve, or revise and approve, or return the amendment to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive Director of the Commission, relative to review of the proposed amendment to the conflict of interest code. Any written comments must be received no later than **May 16, 2005**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not ''costs mandated by the state'' as defined in Government Code section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest code shall approve codes as submitted, revise the proposed code, and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Adrianne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3423(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Oriental Fruit Fly Interior Quarantine as an emergency action. The Department proposes to continue the regulation as amended and submit a Certificate of Compliance for this action no later than June 23, 2005.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before May 16, 2005.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code Sections 401 and 403). Existing law provides the Secretary may establish, maintain, and enforce quarantine regulations, as he deems necessary, to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 5301, 5302 and 5322).

The amendment of Section 3423(b) removed a quarantine area of approximately 116 square miles surrounding the Santa Ana area of Orange County. The effect of the change is to remove the authority for the State to regulate movement of hosts of Oriental fruit fly from, into, and within that area under quarantine because the fly has been eradicated from that area and the quarantine is no longer necessary for the protection of California's agricultural industry. The proposed action does not differ from any existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3423 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3423. No reimbursement is required for Section 3423 under Section 17561 of the Government Code because this amendment removed the portion of Orange County that was in the area under quarantine from the regulation; therefore, enforcement is no longer necessary. There are no mandated costs associated with the removal of this area (Santa Ana) from the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department proposes to amend Section 3423(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 4. CALIFORNIA HORSE RACING BOARD

DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1433 APPLICATION FOR LICENSE TO CONDUCT A HORSE RACING MEETING

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1433, Application for License to Conduct a Horse Racing Meeting. Rule 1433 incorporates by reference forms CHRB-17, Application for License to Conduct a Horse Racing Meeting, and CHRB-18, Application for License to Conduct a Horse Racing Meeting of a California Fair. CHRB-17 will be amended to require that applicants file an audited annual financial statement with the application for license. CHRB-17 and CHRB-18 will also be revised to collect information about the applicant's electronic security system and emergency lighting system in the case of the night racing industry. In addition, the applicant must identify steps it is taking to increase on-track attendance and to develop new horse racing fans. Other changes to the applications eliminate redundant words and phrases, and renumber sections as needed.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 26, 2005**, or as soon after that as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **May 16, 2005**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6042
E-mail: HaroldA@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420 and 19440, Business and Professions (B&P) Code. Reference: 19480 and 19562, B&P Code.

B&P Code Sections 19420 and 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Sections 19480 and 19562, B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

B&P Code Section 19420 provides that jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. B&P Code Section 19440 states the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to: Licensing of each racing association and all persons, other than the public at large, who participate in a horse racing meeting with pari-mutuel wagering. B&P Code Section 19480 states the Board may issue to any person who makes application therefore in writing, who has complied with the provisions of this chapter, and who makes the deposit to secure payment of the license fee imposed by this article, a license to conduct a horse racing meeting in accordance with this chapter at the track specified in the application. B&P Code Section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State.

The Board proposes to amend Rule 1433 by modifying forms CHRB-17 and CHRB-18, which are incorporated by reference. Item 4 of CHRB-17 will be changed to require audited financial statements from the licensee in the case of corporations and limited liability corporations (LLC). Previously, such entities were required to provide only an annual financial statement. It was found that the statements might not provide the detail needed by the Board. In addition, the item was modified to require the licensee to provide a financial statement rather than the corporation or LLC. This change was implemented because the Board does not need to see the financial statement of a parent corporation. Item 5 of CHRB-18 has been modified to eliminate estimated purse distributions for all stakes races, as it is redundant. The estimated purses for overnight stakes and non-overnight stakes should equal ''all stakes'' purses. In addition, a statement providing that all funds generated and retained from on-track pari-mutuel handle, and are obligated by law for distribution in the form of benefits to horsemen, shall not be transferred to a parent corporation outside the State of California, was added to the ''notice to applicant'' section of item 5 of CHRB-17. The statement was requested by Thoroughbred Owners of California (TOC) at the January 2005 Regular Board Meeting. TOC stated it was not clear if the purse accounts sent out-of-state had been co-mingled with other funds, or segregated, or if the full amount of interest had been paid. TOC also stated co-mingled funds held out-of-state lacked protection against creditors. Acronyms for various wagers have been deleted from item 7 of the CHRB-17 and CHRB-18. The acronyms were removed because the wagers they represent are not offered, or are rarely offered, by applicant associations, and the Board is preparing to repeal the enabling regulations. Item 8 of CHRB-17 and CHRB-18 has also been amended to determine how much out-of-state sites are paying associations for simulcasting activity. In addition, under item 8 of CHRB-17 and CHRB-18, the examples for thoroughbred, quarter horse and harness simulcast races to be imported have been deleted. Few associations used the format provided, so it is unnecessary for the purposes of the application. Under item 10 of CHRB-17, and item 9 of CHRB-18, the associate judge has been eliminated because the position is not used. Under the same items, the position of ''film specialist'' has been added. Item 10.E. of CHRB-17 and CHRB-18 has been modified to require the number and location of cameras for dirt and turf tracks. This is to ensure associations are adequately recording each race and are in compliance with Board Rule 1442, Photographic or Videotape Recording of Races. Item 11 of CHRB-17, and item 10 of CHRB-18, has been changed to look exclusively at security controls. The Board is always concerned with racetrack security, and is interested in what steps racing associations are taking to enhance and upgrade their security operations. While the Board has not required associations to install surveillance cameras on their grounds, it wishes to encourage discussion of such issues through the application process. Under the new item 11 of CHRB-17 and item 10 of CHRB-18, associations must include an organizational chart of their security department with names and contact telephone numbers. In addition, they must provide a written plan for enhanced security for specific types of races and for enhanced surveillance of the barn area. Associations must also describe their electronic security system and provide the location and number of video surveillance cameras for the detention barn and stable gate. Also, under item 11 of CHRB-17, night racing associations must describe their emergency lighting systems. A new item 14 has been added to CHRB-17, and a new item 13 to CHRB-18. The new item pertains to on-track attendance and fan development. The Board believes that on-track attendance and new fans are vital for the health of horse racing, so questions regarding the association's advertising budget; promotional plans; personnel and facilities devoted to new fan development; and facility improvements to benefit fans and the industry have been introduced. Under item 17 of CHRB-17, and item 16 of CHRB-18, associations are no longer required to attach a written

certification that an inspection of backstretch employee housing was conducted. As Board staff is involved with such inspections, staff supplies the certification. Item 2 of the CHRB-18 no longer asks for the actual dates racing will be held. In general, fair race meetings run for no more than two weeks, so the information is not necessary (as opposed to thoroughbred, quarter horse and standardbred meetings which can run from one month to a year.) Under item 11 of CHRB-18, the name of the workers' compensation insurance carrier is no longer necessary. All fairs are self insured through California Fair Services Authority, so there is no policy number. All other changes to CHRB-17 and CHRB-18 are for purposes of style and clarity, and for renumbering where needed.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Rule 1433 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1433 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1433 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610. Rule 1433 provides that associations or racing fairs wishing to conduct a horse racing meeting in the State of California must file an Application for License to Conduct a Horse Racing Meeting, CHRB-17; or an Application for License to Conduct a Horse Racing Meeting of a California Fair, CHRB-18. Forms CHRB-17 and CHRB-18 are incorporated by reference in Rule 1433.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: HaroldA@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Pat Noble, Regulation Analyst
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations.

Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO REPEAL RULE 1959.5. SPECIAL SWEEPSTAKES RULE 1959.6. LIMITED SWEEPSTAKES RULE 1959.7. PICK SEVEN RULE 1959.8. PICK 6 ONE POOL RULE 1976. UNLIMITED SWEEPSTAKES RULE 1976.5. SPECIAL UNLIMITED SWEEPSTAKES RULE 1976.7. SPECIAL RESERVED UNLIMITED SWEEPSTAKES

The California Horse Racing Board (Board) proposes to repeal the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to repeal Rule 1959.5, Special Sweepstakes, Rule 1959.6, Limited Sweepstakes, Rule 1959.7, Pick Seven, Rule 1959.8, Pick 6 One Pool, Rule 1976, Unlimited Sweepstakes, Rule 1976.5, Special Unlimited Sweepstakes and Rule 1976.7, Special Reserved Unlimited Sweepstakes.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action(s) by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

WRITTEN COMMENTS

Any interested persons, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person identified in this notice. All written comments must be received at the Board no later than **5:00 p.m.** on **May 16, 2005,** the final day of the written comment period. Submit comments to:

Pat Noble, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
Fax: (916) 263-6042
E-mail: PatN@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440 and 19590, Business and Professions (B&P) Code. Reference: 19593 and 19594, B&P Code.

B&P Code Sections 19420, 19440 and 19590 give the Board jurisdiction and supervision over meetings in California where horse races with wagering on their results are held and authorize the Board to adopt, amend or repeal regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 19420 provides that jurisdiction and supervision over meeting in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meeting is vested in the California Horse Racing Board. B&P Code Section 19440 states that the Board shall have all powers necessary and proper to enable it to adopt rules and regulations for the protection of the public and the control of horse racing. B&P Code Section 19590 provides that the Board shall adopt rules governing, permitting, and regulating pari-mutuel wagering on horse races under the system known as the pari-mutuel method of wagering. B&P Code Section 19593 states no method of betting, pool making, or wagering other than by the pari-mutuel method shall be permitted or used by any person licensed under this chapter to conduct a horse racing meeting. B&P Code Section 19594 states that any person within the inclosure where a horse racing meeting is authorized may wager on the result of a horse race held at that meeting by contributing his money to the pari-mutuel pool operated by the licensee.

As part of the Board's application process to obtain a license to conduct a horseracing meeting racing associations and racing fairs are required to designate the pari-mutuel wagering rules they intend to use during their race meeting. In 1991 the Board adopted a new pari-mutuel wager, Rule 1976.9, Pick (n) Pool. The Pick (n) Pool includes all features contained in Rule 1959.5, Special Sweepstakes, Rule 1959.6, Limited Sweepstakes, Rule 1959.7, Pick Seven, Rule 1959.8, Pick 6 One Pool, Rule 1976, Unlimited Sweepstakes, Rule 1976.5, Special Unlimited Sweepstakes and Rule 1976.7, Special Reserved Unlimited Sweepstakes. When the Pick (n) Pool became effective the racing associations and racing fairs began designating it and discontinued using the pari-mutuel wagering rules the Board proposes to repeal.

The proposed repeal of these pari-mutuel wagers will not impact the public since the racing association and racing fairs do not offer them as a pari-mutuel wager to the public. There will be no impact on the racing associations and racing fairs because they do not use them. The proposed repeal will impact the Board to the extent that approximately 10 pages will be reduced from the Board's Rules and Regulations book.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed repeal of Rule 1959.5, 1959.6, 1959.7, 1959.8, 1976, 1976.5 and 1976.7 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed repeal of Rule 1959.5, 1959.6, 1959.7, 1959.8, 1976, 1976.5 and 1976.7 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to repeal Rule 1959.5, 1959.6, 1959.7, 1959.8, 1976, 1976.5 and 1976.7 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

Rule 1959.5, 1959.6, 1959.7, 1959.8, 1976, 1976.5 and 1976.7 are pari-mutuel wagering rules.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed action during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Pat Noble, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
E-mail: PatN@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Harold Coburn, Regulation Analyst
Telephone: (916) 263-6397

Jacqueline Wagner, Manager
Policy and Regulations
Telephone: (916) 263-6041

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by

contacting Pat Noble, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Pat Noble at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Pat Noble at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1887, TRAINER TO INSURE CONDITION OF HORSE

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1887, Trainer to Insure Condition of Horse. Rule 1887 requires the Board or its agents to notify a trainer of a potential positive test finding within 18 calendar days from the date the sample is taken. The proposed amendment will change the timeframe from 18 calendar days to 21 calendar days.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m.**, Thursday, **May 26, 2005**, or as soon after that as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **May 16, 2005**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Pat Noble, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
Fax: (916) 263-6042
E-mail: PatN@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19580 and 19581, Business and Professions (B&P) Code. Reference: 19440, 19577, 19580 and 19581, B&P Code.

B&P Code Sections 19440 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Sections 19577 and 19581, B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 19440 states that the Board shall have all powers necessary and proper to enable it to adopt rules and regulations for the protection of the public and the control of horse racing. B&P Code Section 19580 states that the Board shall adopt regulations to establish policies, guidelines and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the State. B&P Code Section 19581 states that no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race unless the Board has by regulation, specifically authorized the use of the substance and the quantity and composition thereof. B&P Code Section 19577 states that any blood or urine test sample required by the Board to be taken from a horse that is entered in any race shall be divided or taken in duplicate, if there is sufficient sample available after

the initial test sample has been taken. The initial test sample shall be referred to as the official test sample and the secondary sample shall be referred to as the split sample. All samples immediately become and remain the property of the Board. The Board shall adopt regulations to ensure the security of obtaining and testing of all samples.

If the Board fails to notify a trainer of a potential positive test finding within 18 calendar days from the date the sample was taken the trainer is deemed not responsible under Rule 1887 unless it is shown by a preponderance of the evidence that the trainer administered the drug or other prohibited substance, caused the administration or had knowledge of the administration.

The Board proposes to amend Rule 1887 to extend the time to notify a trainer of a potential positive test finding from 18 calendar days to 21 calendar days.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Rule 1887 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1887 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1887 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

Rule 1887 specifies that the trainer of a horse is the absolute insurer of and responsible for the condition of the horse entered in a race and provides the timeframe for the Board or its agents to notify the trainer of a potential positive test finding.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Pat Noble, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
E-mail: PatN@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Harold Coburn, Regulation Analyst
Telephone: (916) 263-6397

Jacqueline Wagner, Manager
Policy and Regulations
Telephone: (916) 263-6041

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Pat Noble, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in

this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Pat Noble at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Pat Noble at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **May 19, 2005,** at 10:00 a.m. in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California 95814

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **May 19, 2005,** following the Public Meeting in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California 95814

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **May 19, 2005,** following the Public Hearing in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California 95814

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Boiler and Fired Pressure Vessel Safety Orders; Construction Safety Orders; General Industry Safety Orders; and Ship Building, Ship Repairing and Ship Breaking Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **May 19, 2005**.

1. TITLE 8: **BOILER AND FIRED PRESSURE VESSEL SAFETY ORDERS**
   Chapter 4, Subchapter 2, Article 5, Section 770
   Boiler Inspections

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
   Chapter 4, Subchapter 4, Article 4
   Sections 1529 and 1535
   GENERAL INDUSTRY SAFETY ORDERS
   Chapter 4, Subchapter 7, Article 109
   Sections 5190 and 5210

SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS
Chapter 4, Subchapter 18, Article 4
Section 8358
Exposure and Control Method Notification Requirements for Asbestos, Methylenedianiline, Vinyl Chloride, and Cotton Dust

A description of the proposed changes are as follows:

1. TITLE 8: **BOILER AND FIRED PRESSURE VESSEL SAFETY ORDERS**
Chapter 4, Subchapter 2, Article 5,
Section 770
Boiler Inspections

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

In 1988, California Labor Code Section 7682 was amended to lengthen extensions granted by the Division of Occupational Safety and Health (Division) for fired boiler inspections. Prior to the amendment, existing law required the Division to inspect each installed fired boiler internally and externally at least every year, except that the Division could grant extensions for internal inspections to a maximum interval of 24 months where operating experience and design of the boiler demonstrated to the satisfaction of the Division that equivalent safety would be maintained. The Labor Code amendment allowed the Division to increase the length of time between the required internal inspections for fired boilers to 36 months. The inspection interval for other classes of boilers remained unchanged, requiring the Division to establish the inspection interval such that the safety of people working in the vicinity of the boiler was ensured.

Since 1988, the Division's Pressure Vessel Unit has received numerous requests, particularly from the petroleum refining industry, to extend the boiler internal inspection intervals to those allowed by the Labor Code. These requests have resulted in a number of variance applications that have been granted or are currently pending by the Standards Board. Over the last 15 years, the petroleum refinery industry has been implementing the latest advanced inspection and operational control technology in order to operate their facilities for longer intervals between plant shutdowns. The ability to operate their boilers at intervals of 36 months for a fired boiler and 72 months for an unfired boiler allows the refineries to align the boiler internal inspections with their facility shutdowns. The refining industry has stated that a plant shutdown costs $1,000,000 per day for each day of non-production. Preventing facility shutdowns due to internal boiler inspections can save money for both the refinery and the citizens of California through cheaper gas prices.

Of the 436 boilers that have been granted an internal inspection interval extension, 387 are located at petroleum refineries, and 49 are located at conventional utility power plants. These types of facilities are capable of demonstrating the ability to provide the superior maintenance and operating experience necessary to provide the equivalent boiler safety required by the Labor Code when the Division grants these extensions. These internal inspection interval extensions are not typically requested by nor granted for the smaller scale boiler operators as they have the ability to shutdown their boilers annually and do not have the means to provide the superior maintenance (i.e. water treatment, non-destructive examination) necessary to ensure equivalent safety to that provided by annual internal inspections.

The purpose of this proposed rulemaking action is to ensure consistency between Title 8, fired boiler inspection requirements, and existing Labor Code provisions. Additionally, the proposal would amend the maximum interval for internal inspections of unfired boilers that the Division may grant from 36 months to 72 months. Petroleum companies, chemical plants, public utilities or other industries would still be required to individually apply for these inspection extensions, and the Division would continue to review these applications and make the determination as to whether or not to grant such extensions. Any extension requests granted would be subject to a strict review of the facility's superior maintenance and inspection techniques. Boilers that do not meet this standard will be required to continue with annual internal inspection intervals.

This proposed rulemaking action also contains non-substantive, editorial, reformatting of subsections, and grammatical revisions. These non-substantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

Section 770. Boilers Subject to Annual Inspection.

Section 770(a) requires all boilers, except those exempted in Section 771, to be inspected internally and externally every year, except as provided in subsection (b). Existing Section 770(b) outlines the types of boilers and conditions that would extend the annual inspection of boilers to 24 months, or 36 months for unfired boilers. It is proposed to amend these inspection interval extensions to 36 months and 72 months, respectively. It is also proposed to add clarifying language specifying that unfired boilers are

typically called process steam generators. The proposed amendments are necessary to align Title 8 standards with the provisions of Labor Code Section 7682. The proposed amendments will have the effect of allowing companies to operate their boilers for longer periods of time between shutdowns by enabling them to align their boiler internal inspections with their facility shutdowns while ensuring that equivalent workplace safety requirements are maintained.

An amendment is proposed to add new subsection (b)(4), which states that for boilers and process steam generators where metallurgical damage may occur, the Division may categorize the boiler or process steam generator as ''unfired'' upon acceptance of a risk engineering analysis submitted by the owner of the boiler. The risk engineering analysis shall include the design basis for categorizing the boiler as unfired, the potential consequences to the boiler and to the safety of the person(s) responsible for attending the boiler, and a discussion of protective devices and specific procedures to prevent the consequences. The proposed new subsection will provide the regulated public with a means to re-classify boilers that are subject to metallurgical damage as ''unfired,'' based on the Division's review of the engineering analysis and final determination, so that the boiler may be operated for a maximum of seventy-two (72) months between internal inspections.

COST ESTIMATES OF PROPOSED ACTION

Cost or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. Although some state agencies may have boilers regulated by Section 770, the Division is not aware of any that would meet the specific requirements applicable to the proposed inspection interval extensions.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendments would enable affected businesses that meet the specific application requirements to align their boiler internal inspections with their facility shutdowns while ensuring that equivalent workplace safety requirements are maintained, providing potentially significant operating cost savings.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. (See also ''Impact on Businesses.)

Cost or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under ''Determination of Mandate.'' Moreover, no savings to local agencies or school districts as a result of the proposal is anticipated. Although local agencies or school districts may have boilers regulated by Section 770, the Division is not aware of any that would meet the specific requirements applicable to the proposed inspection interval extensions.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a mandate requiring reimbursement by the state pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school district to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a ''new program or higher level of service of an existing program with the meaning of Section 6 of Article XIII B of the California Constitution.''

The California Supreme Court has established that a ''program'' within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim* v. *State of California* (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers—

state, local and private—will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. Internal inspection interval extensions are not typically requested by nor granted for the smaller scale boiler operators as they have the ability to shutdown their boilers annually, and do not have the means to provide the superior maintenance (i.e. water treatment, non-destructive examination) necessary to ensure equivalent safety provided by annual internal inspections.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
Sections 1529 and 1535
GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 109
Sections 5190 and 5210
SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS
Chapter 4, Subchapter 18, Article 4
Section 8358
Exposure and Control Method Notification Requirements for Asbestos, Methylenedianiline, Vinyl Chloride, and Cotton Dust

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Standards Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Standards Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated standards addressing exposure and control method notification requirements for Asbestos, Methylenedianiline, Vinyl Chloride and Cotton Dust on January 5, 2005, contained in a final rule for standards improvement project phase II. The Standards Board is relying on the explanation of the provisions of the federal standard in Federal Register, Volume 70, No. 3, pages 1111–1144, January 5, 2005, as the justification for the Standards Board's proposed rulemaking action. The Standards Board proposes to adopt standards that are substantially the same as the federal standards except for editorial and format differences.

Among other changes, the OSHA final rule revises the exposure and control method notification requirements to ensure affected employees are notified of exposure monitoring results within 5 days for Asbestos and Methylenedianiline, and within 15 days for Vinyl Chloride and Cotton Dust. For Asbestos, the requirement for notifying OSHA by submitting alternative control methods to OSHA's office in Washington DC is also deleted as no longer necessary. The other changes made in the final rule are not addressed in this proposal since the counterpart state standards were already substantially the same or more protective than the OSHA final rule.

The proposed standards are substantially the same as the final rule promulgated by federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting a standard substantially the same as a federal standard; however, the Standards Board is still providing a comment period and will convene a public hearing. The reasons for the written and oral comments at the public hearing are to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standards may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Standards Board's discretion.

COST ESTIMATES OF PROPOSED ACTION

OSHA did not identify any significant costs associated with revising the exposure notification requirements for Asbestos, Methylenedianiline, Vinyl Chloride and Cotton Dust. In the federal preamble, OSHA concludes that the rulemaking action imposes no additional costs on employers.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a ''new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.''

The California Supreme Court has established that a ''program'' within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim* v. *State of California* (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than May 13, 2005. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on May 19, 2005, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is http://www.dir.ca.gov/oshsb. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

NOTICE OF PROPOSED RULEMAKING

Transition Silviculture Method, 2005

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Similar amendments to these proposed regulations were previously noticed by the Board in 2004. However, the effective period to complete the noticed regulation went beyond the one year time limit pursuant to Government Code 11346.4 of the Administrative Procedure Act. Since the Board did not complete the regulation within this time period, a notice of the proposed action shall again be issued pursuant to the above article.

PROPOSED REGULATORY ACTION

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 913.2(b)[933.2(b), 953.2(b)]
Regeneration Methods Used in Unevenaged Management; Transition

§ 913.11(c)(1)&(2) [933.11(c)(1)&(2), 953.11(c)(1)&(2)]
Maximum Sustained Production of High Quality Timber Products

PUBLIC HEARING

The Board will hold a public hearing starting at 9:00 A.M., on Wednesday, June 8, 2005, at the California Department of Forestry and Fire Protection San Bernardino Unit Office, 3800 Sierra Way, San Bernardino, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Wednesday, May 16, 2005. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:
(916) 653-0989

Written comments may also be delivered via e-mail at the following address:
board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) § 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed changes to the Forest Practice Rules are related to amending the ''Transition Method'', a silvicultural method which permits tree harvesting to develop an unevenaged forest stand. The amendments are generally considered ''regulatory relief'' to the existing rules in they permit a wider variety of trees to meet the post harvest stocking size requirements, compared to the existing rule. By expanding the post

harvest stocking tree characteristics, greater flexibility is provided to small landowners allowing them to more quickly transition evenaged or irregular stands to unevenaged stands.

The Maximum Sustained Production of High Quality Timber Products (MSP) amendment provides consistency to stocking standards permitted under the revised Transition Method rule.

The Silviculture Methods Articles of the Forest Practice Rules are devised to recognize the needs of small landowners (and others) with understocked, evenaged, or irregular stands that they wish to mange under a unevenaged silviculture method through use of the transition method. However, the existing transition (§ 913.2 (b) [933.2(b), 953.2(b)]) has some limitations to those who want to create more balanced, unevenaged stands. Several problems with the existing rule are found:

- **Restrictive preharvest stocking requirements preclude appropriate use of the transition method**
- **Restrictive post harvest stocking standards do not take into account preharvest conditions**
- **Restrictive post harvest stocking sample requirements**
- **Ensure requirements for retaining larger sized tree in post harvest stands are maintained**
- **Restrictive re-entry limitations.**

SPECIFIC PURPOSE OF THE REGULATION

The proposed changes to the Forest Practice Rules make the transition method a more useful method to small landowners, particularly to those with a NTMP which requires the use of unevenaged silvicultural methods. The transition method is the removal of trees individually or in small groups from irregular or evenaged stands to create a balanced unevenaged stand structure and to obtain natural reproduction.

The general purpose with the existing transition method regulation is to create a balanced, unevenaged forest. This means a forest with a multi-aged tree distribution with a balanced structure where tree numbers or basal areas are evenly distributed among the age classes. This forest structure promotes growth on trees throughout a broad range of diameter classes, encourages natural reproduction and achieves previously mentioned economic and social goals.

Subsection 14 CCR § 913.2(b) [933.2(b), 953.2(b)] is modified to articulate the intent that the transition method should be applied not only to unbalanced, irregular, or evenaged stands conditions , but also to stands that do not contain sufficient trees to meet the minimum basal area, size and phenotypic quality requirements specified by the current transition stocking requirements (seed tree method standards as described in 14 CCR § 913.1(c)(1)(A) [933.1(c)(1)(A), 953.1(c)(1)(A)]. This change in intent provides small forest landowners who actively manage their forests regulatory relief by permitting a wider range of conditions under which the transition method can be used.

Subsection § 913.2(b)(1)[933.2(b)(1), 953.2(b)(1)] modifies the existing rule language to clarify the area for determination of preharvest stocking levels shall be no greater than 20 acres in size and the pre-harvest stocking level determination applies only to the seed trees evaluation.

Subsection § 913.2(b)(2) [933.2(b)(2), 953.2(b)(2)] clarifies existing grammar and consistency relative to the types of silvicultural method intended to be used following the application of the transition method. It also requires delineation of the locations of previously used transition methods to help enforce the requirement that the transition method may not be used more than two times in the stand.

Subsection § 913.2(b)(3) [933.2(b)(3), 953.2(b)(3)] deletes the maximum preharvest basal area requirement for stand suitability for use of the transition method. It is eliminates the 25 square feet of basal area maximum above the selection basal area standard limitation and uses a broader definition of suitable stands. The broader definition permits use of the transition method for stands with any basal area providing they have trees adequate for natural regeneration. This section also includes an alternative (Option 1 in the rule text). The proposed regulation, with no limitation on the preharvest basal area, may allow the harvest of relatively young vigorous stands, rather then applying a more appropriate silviculture system, such as commercial thinning. Option 1 of the proposed rule language addresses this concern by limiting the use of the transition method to stands with a maximum basal area of up to 50 square feet greater than the selection method (14 CCR 913.2(a)(2)(A), [933.2(a)(2)(A), 953.2(a)(2)(A)]). The 50 square feet of basal threshold was determined to be an appropriate level to balance inclusion of use while providing caution to avoid depleting well stock, vigorously growing, young forest stands.

Subsection § 913.2(b)(4),(5) and (7)[933.2(b)(4), (5) and (7), 953.2(b)(4), (5) and (7)] improve grammar and clarify that the minimum basal area standards shall be met after every use of the transition method. This was included to improve enforceability of the rule in the field.

Subsection § 913.2(b)(6) [933.2(b)(6), 953.2(b)(6)] modifies the post harvest stocking standards. Existing rules require post harvest stocking standards to meet seed tree requirements (§ 913.1(c)(1)(A)[933.1(c)(1)(A), 953.1(c)(1)(A)]. This rule amendment broadens the stocking require-

ments to permit trees less than 18 inch dbh but greater than 12 inches dbh to be sufficient residual stand seed trees for the Northern Forest Practice District, Southern Forest Practice Districts and some Coast Forest Practice District stand types. The changes to the proposed rule exclude for Site I Coast Redwood forests in the Coast Forest Practice District. These forests were exclude to address the issue that the transition method is not applicable to high site (good growing conditions) coast redwood forests. It was determined that fast growing redwood forests should have other silvicultural systems applied, as the species can rapidly grow into stand conditions suitable for a variety of silvicultural methods. For the Coast district, Site I Redwood forests are not permitted to use the revised transition method standard that allows seed trees in the post harvest stands to be comprised of 12 inch or greater trees; existing transition post harvest seed tree sizes (>18 inches dbh) and basal area requirements will be applicable. This change is created in the rule by providing separate standards under this rule subsection for the Coast Forest Practice District and for the Northern and Southern Forest Practice Districts.

Changes to this subsection are also made to address the need to prioritize for retention existing suitable seed trees 18 inches or greater that are disease free and undamaged. With the proposed regulation eliminating the 18 inch seed tree post harvest standard for most forests types, there still is the need to retain larger suitable seed trees when available in the pre harvest stand. The changes in the proposed regulation states that retention of suitable 18 trees in the post harvest stand are required, unless demonstrated by a sustained yield plan (per 14 CCR 913.11[933.11, 953.11 (a) or (b)].

Subsection § 913.2(b)(8) [933.2(b)(8), 953.2(b)(8)] replaces existing rule subsection § 913.2 (b)(7)[933.2(b)(7), 953.2(b)(7)]. It specifies that the plan submitter shall demonstrate that the standards of the selection regeneration method will be met for the third entry of Plan areas harvested by the transition method.

§ 913.11 [933.11, 953.11]
Maximum Sustained Production of High Quality Timber Products

SPECIFIC PURPOSE OF THE REGULATION

Subsection § 913.11(c)(1) [933.11(c)(1), 953.11(c)(1)] is modified to correct a defect in citing only the Coast District's stocking requirements.

The proposed changes to Maximum Sustained Production of High Quality Timber Products, Subsections § 913.11(c)(1)(2) [933.11(c)(1)(2), 953.11(c)(1)(2)] modify the post harvest stocking standards proposed under the transition method amendment of subsection § 913.2(b)(6) [933.2(b)(6), 953.2(b)(6)], Regeneration Methods Used in Unevenaged Management, into the post harvest MSP stocking requirements. It is also modified to correct a defect in citing only the Coast District's stocking requirements. This amendment is needed to provide consistency of stocking standards required to meet MSP and those permitted under the proposed amendment of the Transition Method rule.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the

Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/
board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

a) testified at the hearings,
b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 14. RESOURCES AGENCY

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE OF THE CALIFORNIA RESOURCES AGENCY

NOTICE IS HEREBY GIVEN that the California Resources Agency pursuant to the authority vested in it by section 87306 of the Government Code, proposes to amend its Conflict of Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The Resources Agency proposes to amend the Conflict of Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of sections 87300 through 87302, and section 87306 of the Government Code. In order to reflect the current organizational structure of the Resources Agency, the following positions are added to the Conflict of Interest Code:

1. Undersecretary for Resources
2. Deputy Secretaries

The Resources Agency also proposes to amend the Conflict of Interest Code to include an additional disclosure requirement. This new category will require employees in disclosure category (b) to disclose ''any business activity which receives state funds disbursed pursuant to statutory authority conferred upon the Resources Agency'' in addition to the existing twenty-one disclosure categories.

In addition to these substantive changes, the Resources Agency also proposes to make a number of non-substantive clarifying changes to the existing Conflict of Interest Code.

Copies of the amended code are available and may be requested from the Contact Person set forth below. Any interested person may submit written statements,

arguments, or comments relating to the proposed amendments by submitting them in writing no later than May 22, 2005, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than 15 days prior to the close of the written comment period by contacting the Contact Person set forth below.

The Resources Agency has determined that the proposed amendment:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any State agency.
3. Imposes no cost on any local agency or school district that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the State.
6. Will not have any potential costs impact on private persons, businesses or small businesses.

In making these proposed amendments, the Resources Agency has determined that no alternative considered by the Agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

CONTACT PERSON

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Sharon Broderick
Assistant General Counsel
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Telephone: (916) 653-8152
FAX: (916) 653-8121
Email: sharon.broderick@resources.ca.gov

TITLE 16. BOARD OF ACCOUNTANCY

NOTICE IS HEREBY GIVEN that the California Board of Accountancy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Westin Horton Plaza, 910 Broadway Circle, San Diego, CA 92101 at 11:00 a.m., on May 20, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the California Board of Accountancy at its office no later than 5:00 p.m. on May 19, 2005 or must be received by the California Board of Accountancy at the hearing. If submitted at the hearing, it is requested, although not required, that 25 copies be made available for distribution to Board members and staff. The California Board of Accountancy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 5010, 5018, 5096.9 and 5116 of the Business and Professions Code and Section 11400.20 of the Government Code and to implement, interpret or make specific Sections 122, 163, 5018, 5096–5096.11, 5100, 5116–5116.6, and 5134 of the Business and Professions Code, Section 1633.2 of the Civil Code, and Section 11435.50(e) of the Government Code, the California Board of Accountancy is considering changes to Division 1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Adopt Sections 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 35.1, and amend Section 70 of Title 16 of the California Code of Regulations.

Section 5010 of the Business and Professions Code authorizes the California Board of Accountancy to adopt regulations for the orderly administration of the Accountancy Act. Legislation enacted in 2004 added Article 5.1 (commencing with Business and Professions Code Section 5096) to the Accountancy Act to permit a qualified out-of-state CPA to practice in California without a California license by obtaining a ''practice privilege'' that is under the full regulatory authority of the Board. Section 5096.9 in Article 5.1 authorizes the Board to adopt regulations to implement, interpret, or make specific the provisions of Article 5.1.

This proposal would adopt regulations to implement Article 5.1 including regulations specifying the noti-

fication requirement, payment of the fee, and conditions requiring board approval.

The objective of this proposal is to implement Article 5.1 with regulations that maximize consumer protection and support cross-border practice in a way that is efficient, effective, and encourages compliance.

2. Amend Section 98 of Title 16 of the California Code of Regulations.

Section 5010 of the Business and Professions Code authorizes the California Board of Accountancy to adopt regulations for the orderly administration of the Accountancy Act. Section 5018 of the Business and Professions Code authorizes the Board to adopt regulations related to rules of professional conduct. Section 11400.20 of the Government Code authorizes state agencies to adopt regulations to govern adjudicative proceedings. Section 11425.50 of the Government Code indicates that penalties in adjudicative proceedings cannot be based on a guideline unless the guideline is adopted as a regulation.

Section 98 was adopted in 1997 to incorporate the California Board of Accountancy's disciplinary guidelines by reference. These guidelines were revised in 2001 and in 2003 to address the violation of additional statutory and regulatory provisions.

In 2004, Article 6.5 (commencing with Business and Professions Code Section 5116) was added to the Accountancy Act to authorize the Board to assess disciplinary fines on both individuals and firms. Section 5116 in Article 6.5 requires the Board to adopt regulations to establish criteria for assessing administrative penalties.

This proposal would incorporate by reference ''A Manual of Disciplinary Guidelines and Model Disciplinary Orders'' (6th edition, 2005) which includes criteria for assessing the administrative penalties provided for in Article 6.5.

The objective of this proposal is to implement Article 6.5 by amending Section 98 to facilitate the assessment of reasonable administrative penalties under Article 6.5.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The cost of implementing the Practice Privilege Program will be funded by the fees paid by participants in the program.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact: The California Board of Accountancy has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies were relied upon in making that determination: None.

Impact on Jobs/New Businesses: The California Board of Accountancy has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: Under this proposal, an out-of-state CPA will be charged a $100 fee for a California practice privilege. Also, under this proposal licensed individuals or licensed firms may incur fines for violations of the Accountancy Act.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The California Board of Accountancy has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The California Board of Accountancy must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The California Board of Accountancy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Board of Accountancy at 2000 Evergreen Street, Suite 250, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Aronna Wong
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: (916) 561-1788
Fax No.: (916) 263-3675
E-Mail Address: awong@cba.ca.gov

The backup contact person is:

Name: Mary Crocker
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: (916) 561-1713
Fax No.: (916) 263-3675
E-Mail Address: mcrocker@cba.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Aronna Wong at (916) 561-1788.

WEB SITE ACCESS

Materials regarding this proposal can be found at www.dca.ca.gov/cba.

TITLE 16. BOARD FOR GEOLOGISTS AND GEOPHYSICISTS

NOTICE IS HEREBY GIVEN that the Board for Geologists and Geophysicists is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 2535 Capitol Oaks Drive, Third Floor Conference Room, Sacramento, California 95833 at 10:00 am on May 20, 2005. Written comments must be received by the Board for Geologists and Geophysicists at its office not later than 5:00 p.m. on May 19, 2005 or must be received by the Board for Geologists and Geophysicists at the hearing. The Board for Geologists and Geophysicists, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Current law, section 7800 et seq. of the Business and Professions Code and California Code of Regulations, Title 16, Division 29, section 3005 specify the types and amounts of fees that can be collected by the Board for Geologists and Geophysicists for examinations for registration as a geologist in California.

AUTHORITY AND REFERENCE

Business and Professions Code section 7818 authorizes the Board to adopt the proposed regulations, which would implement, interpret, or make specific section 7887 of the Business and Professions Code.

INFORMATIVE DIGEST OVERVIEW

The Board proposes to amend section 3005, Title 16, Division 29 of the California Code of Regulations. This section concerns the examination fees for registration as a geologist.

Current regulations specify the fees for examinations that applicants must take and pass to obtain registration as a geologist in the State of California. The examinations include a California-specific exam and two national exams, Fundamentals of Geology and Practice of Geology. The fees for the national exams are based on amounts established by the National Association of State Boards of Geology (ASBOG). ASBOG is increasing the fee for its Fundamentals of Geology exam from $125 to $150 beginning with the March 2006 exam. Consequently, the Board is proposing amendments to section 3005 to establish the increased fee for the Fundamentals of Geology examination.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact: The Board has determined that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

The cost implication for representative private persons would be $25 per individual to comply with the proposed action.

Impact on Jobs/New Businesses: The Board for Geologists and Geophysicists has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The proposed regulation will result in a $25 dollar increase per individual to participate in the national ASBOG Fundamentals of Geology examination.

Effect on Housing Costs: None

Plain English Requirement: The Board for Geologists and Geophysicists has determined that the proposed regulations would not affect small businesses.

The proposed regulations would not negatively affect the creation of jobs in the State of California.

CONSIDERATION OF ALTERNATIVES

The Board for Geologists and Geophysicists must determine that no reasonable alternative which it considered or that has otherwise been identified would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

STATEMENT OF REASONS AND INFORMATION

The Board for Geologists and Geophysicists has prepared a statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board for Geologists and Geophysicists at 2535 Capitol Oaks Drive, Suite 300A, Sacramento, California 95833-2926.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be addressed to Paul Sweeney, Executive Officer, at the above address or by telephoning (916) 263-2113.

The backup contact person is DeLesa Swanigan at (916) 263-2113. The person designated to respond to questions on the substance of the regulatory proposal is Paul Sweeney, Executive Officer, (916) 263-2113.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.geology.ca.gov.

TITLE 18. BOARD OF EQUALIZATION

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to amend Regulation 1698, Records, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on May 24, 2005. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by May 24, 2005.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law, Revenue and Taxation Code section 7053, provides that a taxpayer ''shall keep such records, receipts, invoices, and other pertinent papers in such form as the Board may require.'' Regulation 1698 currently requires taxpayers to keep records for a minimum of four years to implement the normal statute of limitation for issuing deficiency determinations.

As part of the Tax Amnesty Program enacted by the Legislature in 2004, Revenue and Taxation Code section 7073 provides that the Board may issue a deficiency determination under specified conditions

''within 10 years from the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.'' Regulation 1698, Records, is hereby amended to interpret, implement and make specific Revenue and Taxation Code section 7053. The Board is amending the regulation to require taxpayers that are qualified to participate in the Tax Amnesty Program to retain records relating to their eligible reporting periods for a minimum of ten years due to the Tax Amnesty Program's ten-year statute of limitation for deficiency determinations, and to make capitalization revisions required by changes in citation conventions that have occurred since the regulation was originally promulgated in 1970.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the State Board of Equalization made an initial determination that the adoption of the amendments to Regulation 1698 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendment to the regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed amendment to this regulation may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Regulation 1698 and the proposed changes have no comparable federal regulations.

AUTHORITY

Section 7051, Revenue and Taxation Code.

REFERENCE

Section 7053 Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Mr. John Waid (916) 324-3828, at 450 N Street, Sacramento, CA 95814, e-mail John.Waid@boe.ca.gov or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Joann Richmond, Regulations Coordinator, telephone (916) 322-1931, fax (916) 324-3984, e-mail Joann.Richmond@boe.ca.gov or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail Karen.Anderson@boe.ca.gov or by mail at State Board of Equalization, Attn: Joann Richmond or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site http://www.boe.ca.gov.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regula-

tion. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with the law, adopt the proposed regulations if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Richmond. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

TITLE 22. DEPARTMENT OF SOCIAL SERVICES

ORD #1104-07

ITEM # 1 CCL Adult Residential Facilities—Waivers and Exceptions

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held May 18, 2005, as follows:

May 18, 2005
Office Building # 9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on May 18, 2005.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at http://www.dss.cahwnet.gov/ord. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Title 22, Division 6, Chapter 1 (General Licensing Requirements), Section 80072 (Personal Rights) and Chapter 6 Section 85068 (Acceptance and Retention Limitations)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current licensing standards and existing regulations provide protection for clients who use postural supports by prohibiting the use of the support as a form of restraint. These amendments repeal references to the approval requirement from the Department for postural supports and specify that the client's physician's order for the postural support must be maintained in the client's record. The amendment for the requirement of bed rails that extend half the length of a client's bed is to clarify the condition upon use. These amendments will effectively reduce Department staff procedures and costs, thereby, allowing Departmental resources to be applied toward the oversight of more important health and safety issues.

Current regulations require facilities to apply for Department approved waivers and exceptions to accept individuals who are over the age of 59 to reside in an Adult Residential Facility. These amendments eliminate the need for Department approved waivers and exceptions by allowing facilities to accept and retain individuals over the age of 59 whose needs are compatible with other clients, if they require the same level of care and supervision as do the other clients in the facility, and the licensee is able to meet their needs. These amendments will effectively reduce Department staff procedures and costs, thereby, allowing Departmental resources to be applied toward the oversight of more important health and safety issues.

COST ESTIMATE

1. Costs or Savings to State Agencies: No additional costs or savings because these regulations make only nonsubstantive or clarifying changes.
2. Costs to Local Agencies or School Districts: No additional costs or savings because these regulations make only nonsubstantive or clarifying changes and do not affect any local entity or program.
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: No additional costs or savings because these regulations make only nonsubstantive or clarifying changes.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations clarify the waiver/exception process to obtain Departmental approval to provide care for clients who are over age 59 and clients who use postural supports.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code Section 1530. Subject regulations implement and make specific Health and Safety Code Sections 1511, 1507, and 1531.

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Richard P. Torres
(916) 657-2659

Backup: Alison Garcia
(916) 657-2586

TITLE 22. EMPLOYMENT TRAINING PANEL

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Employment Training Panel (Panel) proposes to adopt three regulations and amend five regulations in Title 22 of the California Code of Regulations as described below. In particular:

1. Adopt Section 4400(jj) to define ''high performance workplace.''
2. Adopt Section 4403.1 to identify standards for funding pre- and post-apprenticeship training.
3. Adopt Section 4446.5 to require the reimbursement of training funds when a single-employer

contractor moves out-of-state, and to identify mitigating factors that may result in waiving this requirement.

4. Amend Section 4400(*l*) to clarify the definition of ''in-kind contributions'' as a criterion for the Panel's review of training proposals.
5. Amend Section 4403 to update the title ''Workforce Investment Act of 1998'' parallel to a revision in state law.
6. Amend Section 4412.1 to clarify that trainees may be charged for costs under special employment training for small business skills.
7. Amend Section 4415 to strengthen and update the standards for funding supervisor and manager training.
8. Amend Section 4417 to delete certain types of employment separations as criteria in calculating the ''turnover rate'' standard for training proposals.

AUTHORITY AND REFERENCE

The Panel's rulemaking authority is set forth at Section 10205(m) of the Unemployment Insurance (U.I.) Code section 10205(m). In general, the proposed regulatory action will implement, interpret and make specific U.I. Code section 10200 *et seq.*

INFORMATIVE DIGEST

A summary of each proposed adoption or amendment and its purpose is set forth below:

1. Adopt Section 4400(jj), High Performance Workplace. Under existing law the Panel must give funding priority to projects that train workers in skills that meet the challenge of a ''high performance workplace of the future.'' (U.I. Code sections 10200(b)(3); 10214.5.) In addition, the Panel must also prioritize training for ''frontline workers.'' (U.I. Code section 10200(a).) The Panel applies this concept to its consideration of training proposals in a variety of ways, through current regulations. For example, the 40% cap on training supervisors and managers under regulation Section 4415 does not apply when training is in a high performance workplace. However, the term itself is not currently defined in statute or regulations. Proposed Section 4400(jj) would define a high performance workplace with reference to problem-solving and decision-making skills for frontline workers.

2. Adopt Section 4403.1, Apprenticeship Standards. Under existing law the Panel cannot fund training projects that replace, parallel, supplant, compete with or duplicate existing apprenticeship training. Such training programs must be approved by the Department of Industrial Relations, Division of Apprenticeship Standards (DAS). (U.I. Code section 10200(a)(4).) The DAS program standards are set forth in existing law at Labor Code section 3070 *et seq*. However, these programs do not include training that would occur before, or after, the apprenticeship in a relevant trade. This new regulation would clarify the Panel's authority to fund projects for pre- and post-apprenticeship training, as distinct from DAS-approved training. Also, it would set separate standards for funding pre-apprenticeship and post-apprenticeship training.

3. Adopt Section 4446.5, Contractor Relocation. Under existing law a primary purpose of ETP-funded training is to meet the challenge of competition from other states. In particular, the Panel is directed to foster the retention of jobs in industries that are threatened by out-of-state competition. (U.I. Code section 10200(a)(1);10200(b)(4).) Currently, the Panel requires contractors to reimburse training funds if they move their facility to an out-of-state location within three years of contract termination. The current requirement also applies when jobs are relocated jobs out-of-state. This requirement is included in ETP training contracts per the Panel's existing authority to write contracts and establish minimum standards for training proposals. (U.I. Code section 10205(c); 10205(e).) This new regulation would implement what is now a provision of contract, and would list examples of when the Panel may exercise discretion to waive the reimbursement requirement.

4. Amend Section 4400(*l*), In-kind Contributions. Under existing law, the Panel must provide for retraining contracts in companies that make a monetary ''or in-kind contribution'' to the cost of training. (U.I. Code section 10200(a)(1).) In addition, the Panel must establish requirements for in-kind contributions by the contractor or employer that reflect a substantial commitment to the value of the training. (U.I. Code section 10206(b).) The Panel has defined ''in-kind contributions'' at existing Section 4400(*l*). The proposed amendment would clarify that said contributions may be monetary or non-monetary, based on the statutory distinction and the Panel's past experience in this area.

5. Amend Section 4403, Coordination with Other Agencies. Under existing law, the Panel is required to supplement, rather than displace, funds available through existing programs conducted by government-funded training programs, such as the Workforce Investment Act of 1998 (Act). (U.I. Code section 10200(a)(4); Title 29 U.S. Code section 794(d).) In addition, the Panel must coordinate its programs with local and state partners of the Act. (U.I. Code sections 10204(a);10204(c).) The Panel is specifically authorized to solicit proposals or write contracts with a local workforce investment board, or with a grant recipient

or administrative entity selected pursuant to the Act, and otherwise address the training needs of such boards. (U.I. Code sections 10205(c); 10214.5.)

At existing section 4403, the Panel has set standards for coordinating its programs with local and state partners under the predecessor laws that were replaced by the Act. In particular, the former federal Job Training Partnership Act (JTPA) and the former State Job Training Coordination Council and state Private Industry Council (Councils), all of which were repealed and reenacted with reference to the Act. Existing Section 4403 also outlines certain responsibilities for responding to referrals made under the JTPA. The proposed amendment would delete all references to the JTPA and replace them with references to the Act. Similarly, the amendment would replace references to the Councils with references to their replacement Workforce Investment Boards.

6. Amend Section 4412.1, Training Costs Charged to Trainees. Existing law requires the Panel to establish minimum standards for its consideration of training proposals. (U.I. Code section 10205(e).) Existing law also authorizes the Panel to fund the reimbursement of ''reasonable training costs'' through a variety of methods (fixed fee, budget-based) and with prohibitions (no finders' fee, cap on administrative costs). (U.I. Code section 10206(a).) At existing regulation Section 4409, the Panel identified the elements of a Special Employment Training (SET) project, and set forth conditions that will govern its allocation of SET funds for training in small business skills. At existing regulation Section 4412.1, the Panel prohibits contractors from charging training costs to the trainees when the training contract is funded by ETP. Currently, Section 4412.1 exempts ''entrepreneurial training projects'' from this prohibition. The amendment would replace the exemption for entrepreneurial training projects with the same exemption for SET training projects for small business skills, to reflect a similar change in terminology that occurred in the 2001 amendment of existing regulation Section 4409.

7. Amend Section 4415, Workforce Training. Under existing law, a primary purpose of ETP is ''developing the skills of frontline workers'' where said workers are defined as those ''who directly produces or delivers goods or services.'' (U.I. Code section 10200(a).) At existing regulation Section 4415, the Panel placed a restriction against funding the training of supervisors and managers, as compared to the training of frontline workers. The restriction is expressed as 40% of total trainees under a given training contract, with a waiver for small businesses ''with 50 or fewer'' employees. Currently, there is also an exemption for Total Quality Management (TQM) training, and high performance workplace training as defined in Unemployment Insurance Code section 10201(b)(3).

The amendment would limit the waiver for small businesses by making it applicable only to businesses ''with 100 or fewer'' employees, reflecting the Panel's actual experience in this area. The amendment would also delete the exemption for TQM training, again reflecting the Panel's experience with this type of training proposal. Finally, the amendment would delete the reference to Unemployment Insurance Code section 10201(b)(3), because the definition in that section of statute was repealed. In its place, the amendment would reference the definition of ''high performance workplace'' that should be enacted under proposed regulation Section 4400(jj).

8. Amend Section 4417, Secure Job. Under existing law, the Panel is directed to only fund projects that would result in secure jobs. (U.I. Code section 10200(a)(3).) Existing regulation Section 4417 implements this requirement by placing a 20% cap on employment turnover at the company facility where training is requested. Section 4417 also lists eight types of employment separations that must be included in calculating the turnover rate. The amendment would remove four of these types—retirements, deaths, transfers to another company facility and permanent separations due to disability—reflecting the Panel's experience with separations that are not under the employer's control.

No documents would be incorporated-by-reference.

FISCAL DISCLOSURES

The Panel has made the following initial determinations regarding fiscal disclosures required by Section 11346.2 of the Government Code.

A. Fiscal Impact. The Panel has made an initial determination that the proposed regulatory action does not impose costs or savings requiring reimbursement under Section 17500 *et seq.* of the Government Code. Furthermore, this action does not impose non-discretionary costs or savings to any local agency; nor does it impact federal funding for the State.

The Panel has made an initial determination that the proposed action does not impose costs or savings to any State agency pursuant to Section 11346.1(b) or 11346.5(a)(6) of the Government Code. Furthermore, there are no fiscal impact disclosures required by State Administrative Manual sections 6600–6670.

B. Cost Impacts. The Panel is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The same determination applies to housing costs. This action would

clarify the Panel's standards for reviewing and funding training proposals. Thus, the costs incurred in submitting such proposals should be reduced, if anything.

C. Adverse Impact on Business. The Panel has made an initial determination that the proposed regulatory action does not have any significant, statewide adverse economic impact directly affecting business, including the ability to compete. Indeed, the overall purpose of the Panel's program is to enhance the ability of California businesses to meet the challenge of competition from other states.

D. Effect on Small Business. The Panel has determined that the proposed regulatory action does not affect small businesses unless they seek training funds. Since this action would clarify and simplify the Panel's standards for reviewing and funding training proposals, this would be a positive effect.

E. Effect on Jobs and Business Expansion. The Panel has made an initial determination that the proposed action would not create or eliminate jobs in California. Nor would it create new businesses or eliminate existing businesses in California. The Panel has made an initial determination that the proposed action would not directly affect the expansion of businesses currently operating in California.

Nevertheless, the overall intent and purpose of the ETP program is to foster job creation and the retention of high-wage, high-skilled jobs that are threatened by out-of-state competition. (U.I. Code section 10200(a).) The Panel must give funding priority to projects that would train new employees of firms locating or expanding in the state; train displaced workers, and develop workers with skills that prepare them for the challenges of a high performance workplace of the future. (U.I.Code section 10200(b).) Thus, the Panel has made an initial determination that the proposed action may encourage the retention of jobs and businesses in California, in the sense that it would enhance the Panel's ability to implement the purpose of the ETP program.

F. Imposed Mandate. The Panel has made an initial determination that the proposed regulatory action does not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES

The Panel has made an initial determination that there is no reasonable alternative to the regulatory proposed action that would be more effective in carrying out its purpose, or would be as effective and less burdensome to affected private parties. Interested persons are welcome to identify reasonable alternatives during the written comment period.

WRITTEN COMMENT PERIOD

A 45-day written comment period has been established beginning on April 1, 2005 and ending at 5:00 p.m. on May 16, 2005. Any interested person, or his or her authorized representative, may present written comments on the proposed regulatory action within that period. Comments should be sent to the attention of Margie Miramontes at the following address:

Legal Unit, Employment Training Panel
1100 ''J'' Street (4th Floor)
Sacramento, CA 95814

PUBLIC HEARING

A public hearing will not be held unless one is requested by an interested person, or his or her authorized representative. The request must be submitted in writing to Ms. Miramontes at the address shown above no later than 5:00 p.m. on April 29, 2005. The request should identify the specific regulatory action for which the hearing is requested.

MODIFICATIONS

Modifications to the text of the proposed regulatory action may be made after the public comment period. If so, they will be posted on the ETP Website at www.ETP.ca.gov. They will also be available upon request to Ms. Miramontes. Said modifications will be open to public comment for at least 15 days before their adoption, as noticed on the ETP Website.

AVAILABILITY OF DOCUMENTS

The Panel has prepared an Initial Statement of Reasons for the proposed regulatory action, and has compiled all information on which the action was based. This initial statement and information, along with the express text of the proposed action, are available for inspection at the written comment address shown above. Any inquiries should be directed to Ms. Miramontes.

The Panel will prepare a Final Statement of Reasons at the conclusion of the public comment period. This final statement and the information on which it is based will also be available for inspection at the written comment address shown above. Again, any inquiries should be directed to Ms. Miramontes.

This Notice of Proposed Rulemaking is posted on the ETP Website at www.ETP.ca.gov. The Initial Statement of Reasons and the express text of the proposed action are also posted on the ETP Website. When the Final Statement of Reasons is prepared, it will be posted on the ETP Website.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
Tracking No. 2080-2005-006-07

Project: Sand mining in San Francisco Bay, California

Location: East of Carquinez Bridge, in Solano and Contra Costa Counties, California

Notifier: RMC Pacific Materials, Inc.

BACKGROUND

RMC Pacific Materials, Inc. (''RMC'') intends to mine approximately 200,000 cubic yards of sand from Middle Ground Shoal in Suisun Bay and 50,000 cubic yards of sand from Benicia Shoal within the Carquinez Strait in 2005 (''project''). The project could result in direct or indirect take of the following species, all of which are listed as endangered or threatened under the Federal Endangered Species Act (''ESA'') (16 U.S.C. § 1561 *et seq.*): Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*); Central Valley spring-run Chinook salmon (*O. tshawytscha*); Central Valley steelhead (*O. mykiss*); and Central California Coast steelhead (*O. mykiss*). Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and Central Valley spring-run Chinook salmon (*O. tshawytscha*) are listed also under the California Endangered Species Act (''CESA'') (Fish & G. Code, § 2050 *et seq.*). The project could also adversely affect designated critical habitat for the above-listed fish species

The project would be authorized by the U.S. Army Corps of Engineers (''Corps'') under section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). Because of the project's potential for take of ESA-listed salmonids, the Corps consulted with the

National Marine Fisheries Service (''NMFS''), as required by the ESA. On March 7, 2005, NMFS issued a no jeopardy biological opinion (No. 151422SWR2005SR20165:DPR) for the project. The biological opinion describes the project and sets forth measures to mitigate impacts to the above-listed fish species. On March 8, 2005, the Director of the Department of Fish and Game (''Department'') received a written request by RMC requesting a determination that the incidental take statement in the biological opinion that relates to Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon is consistent with CESA pursuant to Fish and Game Code section 2080.1.

DETERMINATION

The Department has determined that the incidental take statement in the biological opinion for the project is consistent with CESA. The mitigation measures in the incidental take statement meet the conditions set forth in Fish and Game Code section 2081, subparagraphs (b) and (c), which, when met, authorize the incidental take of CESA-listed species. Specifically, the Department finds that the take of Sacramento River winter-run Chinook salmon and Central Valley Chinook spring-run salmon will be incidental to an otherwise lawful activity (i.e., mining sand from Middle Ground and Benicia Shoals) and the mitigation measures identified in the incidental take statement will minimize and fully mitigate the impacts of the authorized take on Sacramento River winter-run Chinook salmon and Central Valley Chinook spring-run salmon. The mitigation measures in the incidental take statement include, but are not limited to, the following:

1. Between February 1 and May 31, 2005, all sand mining at Middle Ground and Benicia Shoals shall occur during daytime hours. Daytime hours are defined as 30 minutes after sunrise to 30 minutes before sunset. The combined maximum amount of sand that may be removed from these two shoals, between February and May, 2005, is 20,000 cubic yards.
2. RMC will minimize the time it takes to prime the pump and clear the pipe.
3. When priming the pump or clearing the pipe, the end of the pipe shall be held in the water column no greater than three feet off the bottom.
4. Underwater video equipment should be used to evaluate the behavior of fish in the vicinity of sand mining operations, including those fish that are exposed to the operating end of a suction pipe.
5. Mark/tagged fish studies should be used to evaluate rates of entrainment of fish exposed to the operating end of a suction pipe during sand mining.

Based on the Department's consistency determination, RMC does not need to obtain authorization from the Department under CESA for take of the Sacramento River winter-run Chinook salmon and Central Valley Chinook spring-run salmon that occurs in carrying out the project, provided RMC complies with the mitigation measures and other conditions described in the incidental take statement in NMFS's biological opinion. However, if the project as described in the biological opinion, including the mitigation measures therein, changes after the date of the biological opinion, or if NMFS amends or replaces that opinion, RMC will need to obtain from the Department a new consistency determination (in accordance with Fish and Game Code section 2080.1) or a separate incidental take permit (in accordance with Fish and Game Code section 2081).

DEPARTMENT OF HEALTH SERVICES

THE DEPARTMENT OF HEALTH SERVICES' INTENT TO ESTABLISH PROSPECTIVE PAYMENT SYSTEM REIMBURSEMENT RATES FOR FEDERALLY QUALIFIED HEALTH CENTERS PARTICIPATING IN THE LOS ANGELES COUNTY 1115 DEMONSTRATION WAIVER PROJECT AND CURRENTLY RECEIVING COST-BASED REIMBURSEMENT

This notice is to provide information of public interest with respect to the reimbursement methodology for services rendered to Medi-Cal beneficiaries by Federally Qualified Health Centers (FQHCs) that are participating in the California Section 1115 Medicaid Demonstration Project for Los Angeles County (LA Waiver)—No. 11-W-00076/9. It is the intent of the Department of Health Services (DHS) to submit an amendment to California's Medicaid State Plan, to establish a prospective payment system reimbursement methodology for these FQHCs that are currently reimbursed under a cost-based reimbursement methodology. The transition from cost-based to prospective payment system reimbursement methodology is effective July 1, 2005.

PROSPECTIVE PAYMENT SYSTEM REIMBURSEMENT RATES FOR FQHCs PARTICIPATING IN THE LA WAIVER EFFECTIVE JULY 1, 2005

DHS intends to submit new language to the California State Plan that each FQHC participating in the LA Waiver must convert to an individual prospective payment system reimbursement rate no later than June 30, 2005, because the LA Waiver will expire on June 30, 2005. Pursuant to Section 1902(bb)

of the Social Security Act (the Act), states are required to reimburse FQHCs and Rural Health Clinics (RHCs) under a prospective payment system reimbursement methodology. A prospective payment system individual base rate is established (on a per-visit basis) for each FQHC or RHC using 100 percent of the average of their allowable costs as determined from their fiscal year 1999 and 2000 annual cost reports. California also elected to give the FQHCs and RHCs an option to elect an alternative prospective payment rate that is established based on 100 percent of the allowable costs from their fiscal year 2000 only cost report. The base rates are adjusted annually by the percentage increase in the Medicare Economic Index. In addition, the base rates can be adjusted to reflect allowable scope-of-service changes.

PUBLIC REVIEW

The proposed amendment to the California State Plan, which details the changes discussed above, is available for review at local county welfare offices throughout the State. Copies of this notice may be requested and written comments may be sent to Marie Taketa, Chief, Rate Analysis Unit, Department of Health Services, 1501 Capitol Avenue, Suite 71.4001, MS 4612, P.O. Box 997417, Sacramento, CA 95899-7417.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2074.2, the California Fish and Game Commission (Commission), at its February 3, 2005, meeting in San Diego, rejected the petition (Petition 2004) filed by Messrs. Homer T. McCrary and Fabian Alvarado of Big Creek Lumber Co. and Mr. Robert O. Briggs of Central Coast Forest Association to remove coho salmon (*Oncorhynchus kisutch*) south of San Francisco from the list of endangered species. This action was based on a finding that the petition did not provide sufficient information to indicate that the petitioned action may be warranted. At that meeting, the Commission also announced its intention to ratify this finding at its March, 2005, meeting in Oakland.

NOTICE IS ALSO GIVEN that, at its March 17, 2005, meeting in Oakland, the Commission adopted the following formal findings outlining the reasons for the rejection of the petition.

BACKGROUND

On June 23, 2004, the Commission received a petition dated June 17, 2004, from Messrs. McCrary and Alvarado of Big Creek Lumber Co. and Mr. Briggs of Central Coast Forest Association to remove coho salmon south of San Francisco from the list of endangered species.

On July 2, 2004, in accordance with Sections 2072.3 and 2073.5 of the Fish and Game Code, the Commission directed the Department to evaluate the petition to remove coho salmon south of San Francisco from the endangered species list and to provide a recommendation to the Commission.

The Department completed its evaluation and submitted it to the Commission on December 31, 2004, after receiving an extension from the Commission on September 21, 2004, so that the Department could thoroughly analyze the petition and the available scientific information. The Department's evaluation concluded that the petition did not contain sufficient information to indicate that the petitioned action may be warranted and recommended that the Commission reject the petition. The Commission, at its February 3, 2005, meeting in San Diego, considered the petition, the Department's written evaluation and recommendation, the Department's oral presentation and comments, and public comments. At that meeting, the Commission rejected the petition and made a finding that the petition did not contain sufficient information to indicate that the petitioned action may be warranted. The Commission ratified this finding on March 17, 2005, at its meeting in Oakland.

STATUTORY REQUIREMENTS

A species is endangered under California Endangered Species Act, Fish and Game Code Section 2050 et seq. (CESA), if it ''is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease.'' (Fish & G. Code, § 2062.) The responsibility for deciding whether a species should be removed from the endangered species list, otherwise known as delisting, rests with the Commission. (Fish & G. Code, § 2070.)

To be accepted by the Commission, a petition to remove a species from the endangered species list must include sufficient scientific information that the delisting may be warranted. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subds. (d) and (e).) The petition must include information regarding the species' population trend, range, distribution, abundance and life history; factors affecting the species' ability to survive and reproduce; the degree and immediacy of the threat to the species; the impact of existing management efforts; suggestions for future management of the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the species; and a detailed distribution map.

(Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).) In deciding whether it has sufficient information to indicate the petitioned action may be warranted, the Commission is required to consider the petition itself, the Department's written evaluation report, and comments received about the petitioned action. (Fish & G. Code, § 2074.2.)

The requisite standard of proof to be used by the Commission in deciding whether the petitioned action may be warranted (i.e. whether to accept or reject a petition) was described in *Natural Resources Defense Council* v. *Fish and Game Commission* (1994) 28 Cal.App.4th 1104 [hereinafter *NRDC*]. In *NRDC*, a case where the petitioned action was listing of a species, the court determined that ''the section 2074.2 phrase 'petition provides sufficient information to indicate that the petitioned action may be warranted' means that amount of information, when considered in light of the Department's written report and the comments received, that would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur . . . '' (*NRDC*, supra, 28 Cal. App. 4th at page 1125.) This ''substantial possibility'' standard is more demanding than the low ''reasonable possibility'' or ''fair argument'' standard found in the California Environmental Quality Act, but is lower than the legal standard for a preliminary injunction, which would require the Commission to determine that a listing is ''more likely than not'' to occur. (Ibid.)

The *NRDC* court noted that this ''substantial possibility'' standard involves an exercise of the Commission's discretion and a weighing of evidence for and against the petitioned action in contrast to the ''fair argument'' standard that examines evidence on only one side of the issue. (*NRDC*, supra, 28 Cal. App. 4th at page 1125.) As the court concluded, the decision-making process involves:

> . . . a taking of evidence for and against listing in a public quasi-adjudicatory setting, a weighing of that evidence, and a Commission discretion to determine essentially a question of fact based on that evidence. This process, in other words, contemplates a meaningful opportunity to present evidence contrary to the petition and a meaningful consideration of that evidence.'' (Id. at 1126.)

Therefore, in determining whether the petitioned action ''may be warranted,'' the Commission must consider not only the petition and the evaluation report prepared on the petition by the Department, but other evidence introduced in the proceedings. The Commission must decide this question in light of the entire record.

REASON FOR FINDING

This statement of reasons for the finding sets forth an explanation of the basis for the Commission's finding and its rejection of the petition to remove coho salmon south of San Francisco from the endangered species list. It is not a comprehensive review of all information considered by the Commission and for the most part does not address evidence that, while relevant to the petitioned action, was not at issue in the Commission's decision.

In order to accept this petition, the Commission is required to determine that it has information to persuade a reasonable person that there is a substantial possibility that coho salmon south of San Francisco will be removed from the endangered species list. As the decision in *NRDC* makes clear, the Commission must critically evaluate and weigh all evidence, and this process does not allow the Commission to resolve all uncertainties in favor of either the proponents or opponents of the petitioned action. The Commission may deal with data gaps by drawing inferences based on available information or by relying on expert opinion that the Commission finds persuasive, but in the end the petition and other information presented to the Commission must affirmatively demonstrate the species no longer meets the criteria for protection as an endangered species.

As was previously mentioned, Fish and Game Code section 2072.3 provides that certain sufficient scientific information must be included in a petition in order for it to be accepted. The petition includes some information regarding: species' population trends, range, distribution, abundance and life history; factors affecting the species' ability to survive and reproduce; the degree and immediacy of the threat to the species; the impact of existing management efforts; suggestions for future management of the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the species; and a detailed distribution map.

However, in its oral presentation and comments, the Department informed the Commission as to the current status of coho salmon South of San Francisco, noting that:

- It appears that coho salmon south of San Francisco may be doing better now than they were ten years ago, but populations are still quite depressed and restricted, and are still vulnerable to extinction.
- In 1995, coho salmon were found in Waddell and Scott Creeks and the San Lorenzo River.
- In 2003, only Scott Creek contained all three brood years, and Waddell Creek contained only two of three brood years, one of which contained less than 20 adults.

- Currently, it appears that all three brood years are present in both Scott and Waddell Creeks, and possibly San Vincente Creek, but at far fewer numbers than Scott and Waddell Creeks. Gazos Creek appears to have only two brood years with very low numbers.

In addition, the petition is premised on an argument that the listing of coho salmon south of San Francisco as an endangered species was unfounded or in error because coho salmon are not native to streams south of San Francisco. The petition appears to base this argument on five main points:

- Archeological evidence supports the concept that coho salmon populations were not present prehistorically in the coastal streams south of San Francisco.
- Harsh environmental conditions prevented the establishment of permanent coho salmon populations south of San Francisco.
- The scientific and historical record substantiates the absence of coho salmon populations south of San Francisco.
- Coho salmon south of San Francisco have been introduced through frequent replanting of hatchery produced coho salmon of various origins.
- Recent reductions in hatchery support have allowed the naturally hostile-to-coho salmon environment to nearly extirpate the introduced coho salmon populations south of San Francisco.

The Department, on the other hand, provided the Commission with information in its oral presentation and comments and written evaluation report that:

- Coho salmon were historically present in at least nine coastal streams south of San Francisco.
- The petitioners' assertion that the archeological evidence indicates that coho salmon populations were not present prehistorically in the coastal streams south of San Francisco is not supported by the available information and not supported by the scientists that performed the investigations. There were not enough salmonid bones recovered at the sites to make the conclusion that coho salmon were absent from this region, and many more samples are needed before a definitive conclusion can be made (Gobalet et al. 2004).
- The climatic and hydrologic evidence does not support the petitioners' conclusion that harsh environmental conditions prevented the establishment of permanent coho salmon populations south of San Francisco Bay. Climatic and hydrologic data show that the environmental conditions in San Mateo and Santa Cruz counties are not significantly different from coastal areas north of San Francisco, and the Santa Cruz counties are actually more favorable than east San Francisco Bay sites where coho salmon were documented historically.
- Historical museum records from 1895 indicate that coho salmon were present in several streams south of San Francisco and there is documentation that commercial harvest of coho salmon was ongoing as late as 1870 on two San Mateo County streams. These and other evidence demonstrate that coho salmon were present prior to 1906, which is the date of the first known planting of hatchery coho salmon south of San Francisco.
- The petitioners do not provide any evidence that supports their assertion that coho salmon have been maintained in streams south of San Francisco by hatchery input. The Department knows of no data that supports or refutes this assertion, primarily because there is little data available to evaluate the hatchery contribution to natural abundance. However, hatchery reports show that since the early 1900s hatchery production in the region has been sporadic and relatively small even when out-of-basin broodstock or eggs were used. Recent hatchery output has been extremely variable and declining.
- There are no data to support the petitioners' assertion that recent reductions in hatchery support have caused the severe reduction in coho salmon populations south of San Francisco. Recent status reviews support the conclusion that coho salmon hatchery production in the region south of San Francisco has declined in recent years. The availability of local broodstock has been a major influence on hatchery output in the region. As fish have become more scarce, hatcheries in the region using local broodstock have had an increasingly difficult time obtaining enough fish to support their programs. There is much more information and data supporting the argument that recent declines in coho salmon populations are attributable to well-documented habitat degradation caused by land-use practices, urbanization, and reduced stream flows.
- In contrast to petitioners' assertions, all recent genetic analyses support the genetic distinctiveness of coho salmon from Scott, Waddell, and Gazos creeks, and their affinities to other nearby California coho salmon populations. These recent genetic analyses support the California ESU delineations drawn by NOAA Fisheries and adopted by the Department. The available genetics information does not support the petitioners' assertions that coho salmon found today in streams south of San Francisco are not native. Also, because of the wide range of responses of naturally spawning populations to

hatchery stocking, stocking records alone cannot be used to conclusively document replacement of the naturally spawning stock by the hatchery stock.

- CESA covers certain native species that the Commission has designated as candidate, threatened, or endangered. A native species is one that is indigenous to California. CESA's protection extends to covered species wherever they occur in California. In addition, CESA does not discriminate between hatchery and naturally spawning populations. Recent Commission action to list coho salmon north of San Francisco under CESA includes hatchery as well as naturally spawning populations in this region.
- NOAA Fisheries scientists have also reviewed the information contained in the petition (Pete Adams, NOAA Fisheries, pers. comm.). NOAA Fisheries has recently completed a status review update of the CCC Coho ESU, which includes coho salmon south of San Francisco. They are proposing that the CCC Coho ESU be uplisted under the federal Endangered Species Act from its current status as threatened to endangered, and they are not proposing to exclude coho salmon south of San Francisco.

FINAL DETERMINATION BY COMMISSION

The Commission has weighed all the scientific and general evidence in the petition, the Department's written evaluation report and oral presentation and comments, and other comments received from the public, and, based upon that weighing of the evidence, the Commission has determined that the petition does not provide sufficient evidence to persuade the Commission that the petitioned action may be warranted. (Fish & G. Code, § 2074.2). In making this determination, the Commission considered the petition in light of the Department's written evaluation and oral presentation and comments, and other comments received from the public, and could not reasonably conclude there is a substantial possibility that the listing of coho salmon south of San Francisco was unfounded or in error such that delisting could occur. Nor could the Commission reasonably conclude that there is a substantial possibility that coho salmon south of San Francisco no longer meets the criteria for protection as an endangered species such that delisting could occur.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2074.2, the California Fish and Game Commission, at its February 3, 2005, meeting in San Diego, rejected the petition filed by the Center for Biological Diversity to list the tricolored blackbird (*Agelaius tricolor*) as an endangered species based on a finding that the petition did not provide sufficient information to indicate that the petitioned action may be warranted. At this meeting, the Commission also announced its intention to ratify its finding at its March 17, 2005, meeting in Oakland.

NOTICE IS ALSO GIVEN that, at its March 17, 2005, formal meeting in Oakland, the Commission adopted the following formal findings outlining the reasons for the rejection of the petition.

BACKGROUND

On April 9, 2004, the Center for Biological Diversity, et al. submitted a petition to list the tricolored blackbird (tricolor) as an endangered species and requested that the Commission take emergency action pursuant to Section 2076.5 of the Fish and Game Code to emergency list the tricolor as an endangered species. The Commission, at its May 4, 2004, meeting in San Diego, considered and denied this request. The Commission's findings were:

1. There was insufficient information to indicate that there was any emergency posing a significant threat to the continued existence of the species;
2. There was insufficient evidence to suggest that an emergency regulation was necessary for the immediate conservation, preservation or protection of the tricolor; and
3. The Commission directed the Department to thoroughly review the petition to list the tricolor as an endangered species as required in sections 2072.3 and 2073.5 of the Fish and Game Code, and to report to the Commission if at any time during the review process it believes that emergency action is warranted.

STATUTORY REQUIREMENTS

A species is endangered under California Endangered Species Act (CESA), Fish and Game Code Section 2050 et seq., if it ''is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease.'' (Fish & G. Code, § 2062.) A species is threatened under CESA if it is ''not presently threatened with extinction [but] is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by [CESA] . . . '' (Fish & G. Code, § 2067.) The responsibility for deciding whether a species should be listed as endangered or threatened rests with the Fish and Game Commission (Commission). (Fish & G. Code, § 2070.)

California law does not define what constitutes a ''serious danger'' to a species, nor does it describe what constitutes a ''significant portion'' of a species' range. The Commission makes the determination as to whether a species currently faces a serious danger of extinction throughout a significant portion of its range, (or for a listing as threatened whether such a future threat is likely) on a case-by-case basis after evaluating and weighing all the biological and management information before it. This approach is consistent with the process followed by federal agencies in deciding whether to list species under the Federal Endangered Species Act, 16 U.S.C. § 1531 et seq.

Non-emergency listings involve a two-step process: first, the Commission ''accepts'' a petition to list the species, which immediately triggers regulatory protections for the species as a candidate for listing and also triggers a year-long study by the Department of Fish and Game (Department) of the species' status (Fish & G. Code, §§ 2074.2, 2074.6, and 2084); second, the Commission considers the Department's status report and information provided by other parties and makes a final decision to formally list the species as endangered or threatened (Fish & G. Code, § 2075.5).

To be accepted by the Commission, a petition to list a species under CESA must include sufficient scientific information that the listing may be warranted. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subds. (d) and (e).) The petition must also include information regarding the species' population trend, range, distribution, abundance and life history; factors affecting the species' ability to survive and reproduce; the degree and immediacy of the threat to the species; the impact of existing management efforts; suggestions for future management of the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the species; and a detailed distribution map. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).) In deciding whether it has sufficient information to indicate the petitioned listing may be warranted, the Commission is required to consider the petition itself, the Department of Fish and Game's written evaluation report, and other comments received about the petitioned action. (Fish & G. Code, § 2074.2.)

The requisite standard of proof to be used by the Commission in deciding whether listing may be warranted (i.e. whether to accept or reject a petition) was described in *Natural Resources Defense Council* v. *Fish and Game Commission* (1994) 28 Cal. App.4th 1104. In the *NRDC* case, the court determined that ''the section 2074.2 phrase 'petition provides sufficient information to indicate that the petitioned action may be warranted' means that amount of information, when considered in light of the Department's written report and the comments received, that would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur . . . '' (*NRDC*, supra, 28 Cal. App. 4th at page 1125.) This ''substantial possibility'' standard is more demanding than the low ''reasonable possibility'' or ''fair argument'' standard found in the California Environmental Quality Act, but is lower than the legal standard for a preliminary injunction, which would require the Commission to determine that a listing is ''more likely than not'' to occur. (Ibid.)

The *NRDC* court noted that this ''substantial possibility'' standard involves an exercise of the Commission's discretion and a weighing of evidence for and against listing, in contrast to the fair argument standard that examines evidence on only one side of the issue. (*NRDC*, supra, 28 Cal. App. 4th at page 1125.) As the Court concluded, the decision-making process involves:

> . . . a taking of evidence for and against listing in a public quasi-adjudicatory setting, a weighing of that evidence, and a Commission discretion to determine essentially a question of fact based on that evidence. This process, in other words, contemplates a meaningful opportunity to present evidence contrary to the petition and a meaningful consideration of that evidence.'' (Id. at 1126.)

Therefore, in determining whether listing ''may be warranted,'' the Commission must consider not only the petition and the report prepared on the petition by the Department, but other evidence introduced in the proceedings. The Commission must decide this question in light of the entire record.

REASON FOR FINDING

This statement of reasons for the finding sets forth an explanation of the basis for the Commission's finding and its rejection of the petition to list the tricolor as an endangered species. It is not a comprehensive review of all information considered by the Commission and for the most part does not address evidence that, while relevant to the proposed listing, was not at issue in the Commission's decision.

In order to accept this petition, the Commission is required to determine that it has information to persuade a reasonable person that there is a substantial possibility that the tricolor will be listed. As the decision in the NRDC case makes clear, the Commission must critically evaluate and weigh all evidence, and this process does not allow the Commission to resolve all uncertainties in favor of either the proponents or opponents of the listing. The Commission may deal with data gaps by drawing inferences based on available information or by relying on expert opinion that the Commission finds persuasive, but in the end the petition and other information presented to

the Commission must affirmatively demonstrate the species meets the criteria for protection as a candidate species.

Fish and Game Code Section 2072.3 provides there are several factors to be considered in determining whether a petition should be accepted. The informational deficiencies and factors of Section 2072.3 most relevant to this finding are again:

(1) Population trend;
(2) Population abundance; and
(3) The degree and immediacy of threat.

1. Population Trend:

2. Population Abundance:

In discussing population estimates, the petition cites Beedy and Hamilton's work for all historical and recent breeding accounts. The reports indicate that tricolor populations were declining from levels in the 1930's (1 million to 700,000 birds) and the 1970's (50 percent reduction but no numbers cited). It is interesting that Beedy and Hamilton estimated an annual average of 35,000–110,000 breeding adults during the 1980's. However, the petitioner qualifies this information by noting that these population estimates were not backed up by field surveys, so they are therefore ''not considered adequate . . . ''

The 1994, 1997 and 2000 surveys were all based upon the ''3rd weekend in April'' census approach to colony counting. From the information, it appears ''additional fall season range-wide surveys'' were conducted in 1994. The 1994 survey estimated that 60.5 percent of breeding individuals were found in the 10 largest colonies.

The above mentioned surveys provided population estimates of 369,359 in 1994 to 232,960 in 1997 to 162,508 in 2000. In the petitioner's rebuttal letter dated February 3, 2005, it states that ''The exact number of birds, however, is not relevant because we do not know, and likely can never know, what number is necessary to maintain a stable population. What is important is that the censuses document a precipitous recent decline and that much of this decline can be explained by identified causes that are ongoing and not being addressed.'' (February 3 letter, bottom of page 2)

In its petition, the petitioner lists those causes as:

- Ongoing destruction of grain silage colonies
- Failure to protect highly productive nesting substrates such as Himalayan blackberry
- Permanent loss of nesting substrate due to increasing urbanization and shifts to vineyards and orchards
- Continued high levels of predation
- Spraying of agricultural contaminants

In testimony presented and in written comments, it was pointed out that the ''declines'' in the 1997 and 2000 surveys could be that ''additional full season range-wide surveys'' were not conducted; and therefore, gave lower numbers than in 1994 when a ''fall season range-wide survey'' was conducted. In addition, Hamilton (2003) states that ''If we knew annual survivorship we could estimate the impact of losses of nestlings to agricultural harvesting. If annual survivorship is relatively high these reproductive failures may be relatively unimportant.'' Also, it's a scientific fact that species numbers are cyclic and fluctuate with environmental changes.

What was intriguing to the Commission was that the petition and the Department's evaluation report (which recommended acceptance of the petition) seemed to be at odds on this issue of population estimates. An important question which the petition must address is: ''What is the best estimate of the current abundance and population status for the petitioned species''' The petitioners rely on survey data that has been gathered on population trends and abundance since the 1930's. The petitioners seem to place heavy weight on three field surveys conducted between 1994–2000 which seem to indicate a steady decline in the tricolor population.

On the other hand, the Department's evaluation report states that the field surveys relied on by the petitioners (1994, 1997 and 2000) ''have little value in estimating population size.'' Based on this statement, the Department appears to be rejecting the petitioners data as failing the ''sufficient scientific information'' test and then it introduces its own indicator of the population status of the tricolor: the largest detected colony size.

Information provided to the Commission requests that the Commission reject the Department's indicator of the population status of tricolor as there is absolutely no previous scientific theory in the literature postulating that estimating the largest detected colony size is a legitimate, scientific method for estimating overall population status, that the Department seemed to have developed this theory with no references to any underlying scientific theory or fact and that the theory had not received even preliminary scientific vetting or peer review. The Commission agrees that this ''new theory'' does not meet the ''sufficient scientific information'' test.

Curiously, neither the petitioner (in its February 3, 2005, rebuttal letter) or the Department (in its Evaluation Report) utilized information from the 2004 survey. The Department indicated that the information was provided too late for its analysis, but it was reported to the Commission that the information was provided in early August, at least a month before the Department's evaluation report was submitted to the Commission. That information included data from Dr. William J. Hamilton III (one of the premier tricolor scientists) who had surveyed a large, successful

nesting colony at Delevan National Wildlife Refuge. His detailed account of observation of a 136,000 tricolor colony that fledged over 97,000 young was the largest reported colony since the 1960's. This information would refute the Department's ''theory'' regarding the ''largest detected colony size'' as an indicator of the species' decline.

The petitioner, in its February 3, 2005, rebuttal letter, states that ''While the 2004 survey was a good effort to identify the location and relative size of colonies, it is not a reliable or accurate estimate of population size, and in fact was not designed to determine population trend (reference to Department's evaluation report). In addition, final estimates are not available, and when they are available, numbers from this survey must necessarily be viewed with extreme caution . . . . In sum, the methods and protocol with respect to reporting and analysis of the 2004 survey are highly suspect and the 2004 survey results cannot reliably be used for population estimations.''

The Commission disagrees with the above statements as being misleading and an incomplete characterization of the 2004 survey results. While the 2004 survey did depart from the April surveys in 1994, 1997, and 2000, which were to locate all tricolor colonies, estimate their numbers, and determine nesting outcomes where possible, that numbered 2,000 or more birds in the past, count colonies found, document the location and size of new colonies, and document the condition of sites used historically, it did provide good information from Dr. Hamilton's personal surveys.[1] On one hand the petitioners utilizes Dr. Hamilton's data, but in this instance, they disregard it.

Green and Edson (2004) explained that ''The express purpose of the 2004 survey was to visit historical Central Valley sites, so the difference with previous surveys is perhaps not surprising as survey effort was concentrated in a smaller area than in previous years. The numbers of active colonies was low compared to previous years (33 in 2004 versus 72 in 2000, for example), but many sites in southern California were not visited, and many small, historical colonies were not visited, thus perhaps accounting for some of the discrepancies. Small colonies make up for the bulk of all colonies every year. In 2000, for example, 50 of the 72 active colonies found during the survey had fewer than 2,000 birds each (Hamilton 2000) . . . . We reiterate, that the results of this survey were not intended to be used to estimate the statewide or even valley-wide tricolored blackbird population. A more accurate estimate would require more surveyors covering more potential tricolored blackbird nesting habitat over more of the breeding season, or using new methods combining intensive area sampling and double-observer methods (Yee and Miller 2004). Although the results cannot support conclusions related to trend of the overall population, they do provide valuable information on the current status of many of the known colony sites in southern part of the Central Valley.[2]

In addition, premier tricolored blackbird scientist, Dr. William J. Hamilton III, conducted a season-long survey and located all colonies reported to him by the Central Valley Bird Club observers. Dr. Hamilton indicated that some of the Central Valley Bird Clubs counts were modified based upon (1) his personal counts of the number of nests in a colony after the breeding season, (2) discussion with the observers who made observations during the survey, (3) more exact measurements of the areas occupied by colonies at some later date, and (4) inclusion of the largest number of birds present at any time during the season, estimates at the time of the survey notwithstanding.[3]

Dr. Hamilton also stated that ''Active colonies settled in silage need to be protected, but the implication that the ongoing decline of tricolor populations is mostly due to harvesting of silage fields by dairy farmers (Center for Biological Diversity 2004) is not based upon a comprehensive analysis of existing data. Important conservation priorities of tricolors are not limited to protection of the silage field nesting colonies in the San Joaquin Valley.[4]

As noted earlier, during the 2004 survey, Dr. Hamilton observed the largest colony since the 1960's at Delevan National Wildlife Refuge of over 136,000 birds that fledged over 97,000 young. It was reported that more tricolors were observed during the restricted 2004 survey than in 1997 or 2000 surveys. This information provides credible evidence that the tricolors' population trend is not necessarily declining; and therefore, is not endangered throughout all or a significant portion of its range.

Fish and Game Code Section 2072.3 clearly states that the petition must provide information about species' abundance and population trend. This petition is clearly deficient in providing sufficient scientific information on both population trend and abundance.

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[1] Page 29, ''The 2004 Tricolored Blackbird April Survey'', Green & Edson, Central Valley Bird Club Bulletin, Spring/Summer 2004, Volume 7—Nos. 2 & 3.

[2] Pages 29 & 30, ''The 2004 Tricolored Blackbird April Survey'', Green and Edson, Central Valley Bird Club Bulletin, Spring/Summer 2004, Volume 7—Nos. 2 & 3.

[3] Pages 32 & 33, ''Management Implications of the 2004 Central Valley Tricolored Blackbird Survey'', William J. Hamilton III, Central Valley Bird Club Bulletin, Spring/Summer 2004, Volume 7—Nos. 2 & 3.

[4] Page 43, Ibid.

3. The degree and immediacy of threat:

The problems caused by the current petition's lack of population abundance and trend information are compounded within the petition's discussion of purported threats to tricolor. Without a reliable estimate of population, no realistic assessment of the scope of the threat to the species is possible. The petition also fails to state clearly the effects of not listing tricolor. Most listings of other species by the Commission were clearly documented by utilizing population size to show dramatic and measurable declines in population caused by the lack of protections. Some listings of species looked to small population size initially to show the need for immediate protection of the species.

A primary threat claimed in this petition is tricolor nesting habitat destruction from harvesting diary silage. Instead of demonstrating actual threats to the survival of tricolors, the petitioners provide general and vague statements that they say may have impacts to tricolor survival. There are no numbers, no facts and no actual demonstration of harm, much less a threat to the overall survival of the species. The petition only offers vague generalities about the scale of the threat to tricolors, with no indication of how the species would be impacted.

As noted earlier, Dr. Hamilton has stated that, ''If we knew annual survivorship we could estimate the impact of losses of nestlings to agricultural harvesting. If annual survivorship is relatively high these reproductive failures may be relatively unimportant.'' The petitioners failed to generate any information to support their claims and provide any credible evidence of the effect of nest destruction on the species as a whole.

Fish and Game Code Section 2072.3 explicitly requires the presentation of sufficient credible information on the questions of degree and immediacy of threat and the impact of existing management efforts. Section 2072.3 provides that ''Petitions shall include information regarding . . . the degree and immediacy of threat, the impact of existing management efforts . . . '' The petition lacks sufficient information on the degree and immediacy of threat component of the statute under current conditions.

Tricolors are provided existing protection under the Migratory Bird Treaty Act and Sections 3503 and 3513 of the Fish and Game Code. In addition, a Tricolored Working Group was formed several years ago to develop and implement conservation measures beneficial to tricolors. Efforts of the cooperative working group and other possible collaborative efforts among state, federal, local and private parties have provided substantial benefits for the species and have the potential for additional future protections. The Commission, therefore, concludes that existing regulatory mechanisms further support the finding that there is not sufficient information to indicate that the petitioned action may be warranted.

FINAL DETERMINATION BY COMMISSION

The Commission has weighed all the scientific and general evidence in the petition, the Department's written report, and written and oral comments received from numerous members of the public, and, based upon that weighing of the evidence, the Commission has determined that, although there may be some reason for concern, the petition provides insufficient evidence to persuade the Commission that the petitioned action may be warranted (Fish and Game Code Section 2074.2). In making this determination the Commission finds that the petition does not provide sufficient information in the categories of population trend, abundance, and degree and immediacy of threat to find that the petitioned action may be warranted. In weighing the evidence, the Commission further finds that any threat to tricolored blackbirds in California is reduced by the existing statutory protections. The Commission also finds that the petition does not provide sufficient information range-wide regarding populations trends and abundance and immediacy of threat for the Commission to adequately assess the threat and conclude that there was a substantial possibility that the species will qualify for listing.

STATE COASTAL CONSERVANCY

CORRECTED

NOTICE OF INTENTION TO AMEND
THE CONFLICT-OF-INTEREST CODE OF THE
STATE COASTAL CONSERVANCY

NOTICE IS HEREBY GIVEN that the State Coastal Conservancy, pursuant to the authority vested in it by section 87306 of the Government Code, proposes an amendment to its Conflict-of-Interest Code. The purpose of this amendment is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The State Coastal Conservancy proposes to amend its Conflict-of-Interest Code to include a new employee position that involves the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment adds a new position the list of designated employees, that of Senior Information Systems Analyst, to reflect the current organizational structure of the Conservancy. Copies of the amended code are attached to this Notice, and may be obtained from the Contact Person below.

The proposed amendments will be considered by the Coastal Conservancy at its public hearing on **June 23, 2005**. Information about the location of the hearing and a copy of the agenda may be obtained after **June 13** by contacting the Contact Person set forth below. Any interested person may submit written statements, arguments, or comments relating to the proposed amendment by submitting them in writing to the Contact Person at the address set forth below no later than **June 21, 2005**, or at the public hearing, whichever comes later.

The State Coastal Conservancy has prepared a written explanation of the reasons for the proposed amendment and has available the information on which the amendment is based, as follows:

This amendment adds the position of Senior Information Systems Analyst as a ''designated employee'' who is required to file statements of economic interest under provisions of the Political Reform Act (Government Code Section 81000 *et seq.*) and the standard conflict of interest code set forth in 2 Cal. Code of Regulations Section 18730, which is incorporated by reference in the Conflict of Interest Code of the State Coastal Conservancy. The Senior Information Systems Analyst is a new position for the Conservancy, and is involved in the making or participation of making of decisions with regard to the provision of goods, services, materials or facilities to the Conservancy, which may have a material financial effect on any financial interest of the employee. This amendment would require that any such financial interest be disclosed. Pursuant to regulations and policies of the Fair Political Practices Commission, the inclusion of new positions is a substantive amendment (2 Cal. Code of Regulations §§ 18750, 18752). No other provisions of the Conflict of Interest Code will be affected by this amendment.

The State Coastal Conservancy has determined that the proposed amendment:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any state agency.
3. Imposes no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the State Coastal Conservancy must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Marcia Grimm, Senior Staff Counsel
State Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612
(510) 286-1084
mgrimm@scc.ca.gov

DECISION NOT TO PROCEED

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF DECISION NOT TO PROCEED

California Code of Regulations
Title 13, Sections 230.00-230.30, Lien Sales

Pursuant to Government Code Section 11347, NOTICE IS HEREBY GIVEN that the California Department of Motor Vehicles has decided not to proceed with the adoption of sections 230.00–230.30 of Title 13, Article 3, Chapter1, Division 1, of the California Code of Regulations, regarding Lien Sales, (Notice File No. Z-04-0713-02, published July 23, 2004, in the California Regulatory Notice Register) and therefore withdraws this proposed action for further consideration.

RULEMAKING PETITION DECISIONS

CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

DECISION ON PETITION TO
ADOPT REGULATIONS

The California Institute for Regenerative Medicine submits the following response to a petition filed by Philp R. Lee and Charles Halpern, requesting the California Institute for Regenerative Medicine to adopt seven proposed regulations.

PETITIONERS

Philip R. Lee, MD and Charles Halpern, JD

AUTHORITY

Under authority established in Health & Safety Code section 125290.40(j), the Independent Citizens' Oversight Committee of the California Institute for Regenerative Medicine shall adopt, amend and rescind rules and regulations to carry out the purposes of Health & Safety Code Division 106, Part 5, Chapter 3 (commencing with section 125290.10), which implements Article XXXV of the California Constitution, which article establishes the California Institute for Regenerative Medicine.

Pursuant to Health & Safety Code sections 125290.40(a), 125290.40(h), and 125290.45(b)(1), the Independent Citizens' Oversight Committee delegated to the chairperson, at its March 1, 2005 regular meeting, the responsibility to work with counsel to respond to this petition on the merits.

SUMMARY OF PETITION

The petition submitted to the California Institute for Regenerative Medicine pursuant to Government Code section 11340.6 requests the Independent Citizens' Oversight Committee to adopt seven regulations:

1. The Chair, Vice-Chair, Acting President, President and employees of the California Institute for Regenerative Medicine shall be subject to Standards of Ethical Conduct based on National Institutes of Health Supplemental Standards of Ethical Conduct and adapted for application to the California Institute for Regenerative Medicine and Independent Citizens' Oversight Committee by petitioners.
2. No employee or officer of the Independent Citizens' Oversight Committee or California Institute for Regenerative Medicine shall receive a salary higher than the highest paid Institute Director at the National Institutes of Health; no employee shall receive a salary higher than the Secretary of Health and Human Services of the state of California; all hiring shall be done through an open process, with jobs posted so as to attract candidates from minority groups, women, and disadvantaged communities.
3. No members shall be appointed to any Working Group until the Independent Citizens' Oversight Committee has established the conflict of interest rules that will apply to that Working Group.
4. Members of all Working Groups shall perform their duties, including financial disclosure, consistent with all requirements of the Political Reform Act, Title 9 (commencing with Sec. 81000) of the Government Code.
5. All meetings of the Scientific and Medical Research Facilities Working Group and the Scientific and Medical Accountability Standards Working Group shall be open to the public consistent with the Bagley-Keene Open Meeting Act and the Public Records Act, with such exceptions as provided by those Acts.
6. The Scientific and Medical Research Funding Working Group shall conduct all its meetings in public, consistent with the Bagley-Keene Open Meeting Act and the Public Records Act, with appropriate modification as the Independent Citizens' Oversight Committee may establish, in order to permit closed meetings when necessary to assure that scientific peer review, as that term is defined in NIH Sec. 5501.109(b)(7), is thorough and effective.
7. No grants or loans will be considered until grant guidelines are adopted by the Independent Citizens' Oversight Committee and potential applicants have been given an opportunity to prepare applications and to apply. Such guidelines shall specify selection criteria, the substantive scope of the grant program (e.g. whether all grants must be for embryonic stem cell research), the size of the grants being considered, matching requirements (if any), and the availability of grants for capital projects. In addition, no grants or loans will be considered until guidelines are in place which assure that the financial interests of the state and its taxpayers are specified and protected.

DECISION

This petition raises very important issues, which merit careful consideration by the full body of the Independent Citizens' Oversight Committee in public meetings. The Independent Citizens' Oversight Committee intends to invite the public to participate in open discussions of each of these items. In addition, the board reiterates that no research grants will be awarded until appropriate standards are in place.

The board collectively decided at its March 1, 2005 meeting not to create a subcommittee to address the issues raised by this petition. The Independent Citizens' Oversight Committee has made a fundamental public commitment to hold discussions of high importance before the full board, and later in open board subcommittee hearings with proper public notice, so that petitioners and other members of the public may address comments to the members of the board.

As an interim solution, while the Independent Citizens' Oversight Committee works to schedule public discussion of the meaningful questions raised by petitioners, the Independent Citizens' Oversight Committee has deemed it most appropriate to delegate authority to the Chairperson to work with counsel to respond to this petition on its merits.

The California Institute for Regenerative Medicine is structured to provide significant conflict of interest regulations and medical and ethical standards, based upon recognized and respected standards adopted by the National Institutes of Health. Those regulations and standards are in the process of being developed by the Independent Citizens' Oversight Committee with active public participation. In addition, the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine and the National Research Council (the National Academies) are currently in the process of developing model medical and ethical standards for stem cell research—specifically to meet California's timeline. These are due to become public in April and will be taken into full consideration by the California Institute for Regenerative Medicine and the public. It is also important to note that existing federal regulations, which apply to research conducted with Proposition 71 funds, will ensure that appropriate patient protections are in place.

In the short few months that the California Institute for Regenerative Medicine has been in existence, it has made significant progress towards setting appropriate and necessary conflict of interest rules for staff and board members. The Independent Citizens' Oversight Committee is committed to adopting stringent conflict of interest policies and medical and ethical standards—with input from the public. In fact, the California Institute for Regenerative Medicine has now held 14 open public meetings in just 13 weeks.

The Independent Citizen's Oversight Committee welcomes petitioners' participation in this ongoing standards-setting process, and looks forward to collaborating with all members of the public in this important endeavor.

1. Pursuant to Health & Safety Code section 125290.30(g) all members of the Independent Citizens' Oversight Committee and employees of the California Institute for Regenerative Medicine are subject to the conflict of interest provisions in the Political Reform Act. **An Independent Citizens' Oversight Committee member may not participate in a decision to award funds to his or her institution. Members of the Independent Citizens' Oversight Committee and employees of the California Institute for Regenerative Medicine are also subject to Government Code section 1090, which prohibits a person from being interested in a contract in both his or her public and private capacities.** Employees of the California Institute for Regenerative Medicine are governed by the terms of the Conflict of Interest Code, adopted by the Independent Citizens' Oversight Committee for notice on March 1, 2005 and also by the terms of an Incompatible Activities Statement, as required by Government Code section 19990, which prohibits state employees from engaging in outside employment that is incompatible or in conflict with their state duties. (Gov. Code, § 19990.)

Because Independent Citizens' Oversight Committee members and employees of the California Institute for Regenerative Medicine are subject to the conflict of interest provisions established by California law, the same provisions that govern other state officers and employees, the Independent Citizens' Oversight Committee declines at this time to adopt petitioners' proposed ''Standards of Ethical Conduct.'' **The Independent Citizens' Oversight Committee, however, is considering adopting a Conflict of Interest Policy to further delineate the responsibilities of members of the Independent Citizens' Oversight Committee, beyond the provisions of state law. The Independent Citizens' Oversight Committee has requested external review by the National Academies of the draft policy and, when this review is complete, will consider the policy at an open, public meeting of the Independent Citizens' Oversight Committee.**

The conflicts policy model of the National Academies is one of the principle models under review by the Independent Citizens' Oversight Committee. The National Academies guidelines are used annually by 10,000 scientists and professionals serving on committees to consider grants, grant administration, standards and other scientific policies in the United States. The conflicts policies of the National Academies are held in high esteem nationally and internationally.

2. The California Stem Cell Research and Cures Act expressly requires the Independent Citizens' Oversight Committee to set compensation levels for staff of the California Institute for Regenerative Medicine within the range of compensation levels for executive officers, scientific, medical, technical and administrative staff at the medical schools of the University of California and other California universities and non-profit academic research institutions from which members of the Independent Citizens' Oversight Committee are drawn. Pursuant to Health & Safety Code section 125290.45(b)(4) the Independent Citizens' Oversight Committee ''shall set compensation for the chairperson, vice chairperson and president and other officers, and for the scientific, medical, technical, and administrative staff of the institute within the range of compensation levels for executive officers and scientific, medical, technical, and administrative staff of medical schools within the University of California system and other California universities, and non-profit and academic research institutions, as described in Health & Safety Code section 125290.20(a)(2).'' This provision enables the California Institute for Regenerative Medicine to offer

competitive salaries to attract the best and brightest scientists, technical staff and administrators. Furthermore, as a state agency, the California Institute for Regenerative Medicine must adhere to the requirements of the Act. (Cal. Const., art, III, § 3.5.)

The California Institute for Regenerative Medicine has consulted with the Department of Personnel Administration on hiring practice policies and is currently working with the University of California and Spencer Stuart, an executive search firm, to ensure that its compensation and hiring practices are consistent with state law and that salaries are at a competitive level sufficient to attract the best and brightest staff for the important mission of advancing medical therapies. In addition, the California Institute for Regenerative Medicine is committed to conducting an open hiring process and attracting a diverse staff.

Because the Independent Citizens' Oversight Committee is required by statute to set compensation levels based on compensation paid by University of California campuses with medicals schools and by other California universities and nonprofit research institutions and because these compensation levels permit the Independent Citizens' Oversight Committee to attract the best and brightest scientists, technical staff and administrators, the Independent Citizens' Oversight Committee declines to adopt petitioners' request for adoption of regulations pertaining to salaries of Independent Citizens' Oversight Committee members and employees of the California Institute for Regenerative Medicine. Because the California Institute for Regenerative Medicine has previously consulted with the Department of Personnel Administration and is working with the University of California and Spencer Stuart to make sure that its compensation and hiring practices are consistent with state law and are competitive to attract the personnel to fulfill the institute's medical mission, it declines petitioners' request to adopt regulations governing the California Institute for Regenerative Medicine's hiring practices.

3. Health & Safety Code section 125290.50(e)(1) directs the Independent Citizens' Oversight Committee to adopt conflict of interest rules to govern the participation of Working Group advisory members who are not members of the Independent Citizens' Oversight Committee. These rules will be based on the conflict of interest standards applicable to peer group reviewers at the National Institutes of Health (Health & Safety Code section 125290.50(e)(1).)(Independent Citizens' Oversight Committee Working Group members are subject to the Political Reform Act conflict of interest guidelines, as described above.) Because the Health & Safety Code expressly directs the Independent Citizens' Oversight Committee to adopt conflict of interest standards that will govern participation of members of the Working Groups, and given that the board is proceeding with the subcommittee and board public hearing process necessary to adopt those standards, the Independent Citizens' Oversight Committee declines petitioners' request for adoption of a regulation requiring that no Working Group members be appointed until the Independent Citizens' Oversight Committee has established the conflict of interest rules that will apply to that Working Group.

The provisions of the Act already clearly establish the basic guidelines for conflict of interest. Health & Safety Code section 125290.50(e)(1) mandates that participation of Working Group members be governed by conflict of interest rules. (These shall be provisions of the Political Reform Act, in the case of Independent Citizens' Oversight Committee members, or conflict of interest rules adopted by the Independent Citizens' Oversight Committee from the National Institutes of Health model for peer review, in the case of non-Independent Citizens' Oversight Committee members). Although the non-ICOC members of the Working Groups may be appointed before the Independent Citizens' Oversight Committee sets conflict standards, they will not participate in the work of the Working Groups until such standards are adopted and applied.

4. Pursuant to Health & Safety Code section 125290.40(c), the Independent Citizens' Oversight Committee shall make final decisions on research standards and grant awards in California. The Political Reform Act, Title 9 of the Government Code shall apply to the Independent Citizens' Oversight Committee (Health & Safety Code section 125290.30(g)(1).) The participation of Working Group members shall be governed by conflict of interest rules (Health & Safety Code 125290.50(e).) However, because the Working Groups are purely advisory and have no final decision-making authority, Health & Safety Code section 125290.50(e) provides that Working Group members shall not be considered public officials, employees or consultants for purposes of the Political Reform Act (Title 9 (commencing with Section 81000) of the Government Code).

Because the Act mandates that the Independent Citizens' Oversight Committee adopt conflict of interest rules for Working Group members based upon specific areas of the National Institutes of Health standards, as a floor, (the Independent Citizens' Oversight Committee is also considering the conflict standards of the National Academies as a model for the Scientific and Medical Accountability Standards and Scientific and Medical Research Facilities Working Groups, as a potential proven standard to cover areas of the Working Groups' responsibilities that may not be fully addressed by the standards of the National Institutes of Health) and because petitioners' request is inconsistent with the express exemption of the

members of the Working Groups from Title 9 (commencing with section 81000) of the Government Code, the Independent Citizens' Oversight Committee declines petitioners' request for adoption of a regulation requiring that all Working Groups perform their duties consistent with all requirements of Title 9 of the Government Code. Public hearings will be held to consider the basic model of the National Institutes of Health standards and to consider the conflicts standards of the National Academies.

In addition, the conflicts standards applicable to members of the Scientific and Medical Research Funding Working Group have already been raised above those of the National Institutes of Health by the Independent Citizen's Oversight Committee's decision to select only Scientific and Medical Research Funding Working Group scientist and physician-scientist members who are from out-of-state and are therefore, by definition, not qualified to receive grants. This approach further limits the potential for conflicts to arise, while retaining the provisions that would address such conflicts as may arise.

5 & 6. Pursuant to Health & Safety Code section 125290.50(f), the Working Groups shall generally not be subject to the provisions of the Bagley-Keene Open Meeting Act or the California Public Records Act. However, all records of the Working Groups submitted as part of the Working Groups' recommendations to the Independent Citizens' Oversight Committee for approval *shall* be subject the Public Records Act.

As established by the last fifty years of actual experience of the National Institutes of Health, confidentiality in working group meetings is essential to ensure frank, critical and open discussion among scientists of the merits and deficiencies of scientific proposals. The National Academies have a long history of holding private technical and scientific working sessions on standards—to avoid special interest lobbying at the technical and scientific level (see letter from National Academies President Bruce Alberts, attached)—followed by public notice, public comment and public hearings. The Independent Citizens' Oversight Committee will consider the standards development model of the National Academies, as specifically adopted by Congress (Section 15 of the Federal Advisory Committee Act, 5 U.S.C. App.) This standards development model incorporates public hearings.

The Act exceeds the standards of the National Academies by specifically requiring a 270 day public hearing period before final standards can be adopted. It also expressly requires that the California Administrative Procedure Act and public hearings be utilized in making any subsequent modifications to the final standards. Furthermore, all Working Group recommendations will be made to the Independent Citizens' Oversight Committee in open public meetings and will be subject to public debate prior to their adoption. Because this process is established by law and is essential to the effective functioning of the Working Groups, the Independent Citizens' Oversight Committee declines petitioners' request for adoption of a regulation requiring that all meetings of the Scientific and Medical Research Facilities Working Group and the Scientific and Medical Accountability Standards Working Group be open to the public consistent with the Bagley-Keene Open Meeting Act. The Independent Citizens' Oversight Committee has openly expressed, in its public hearings and its subcommittee hearings—14 public hearings in the past 13 weeks—that the working policy of the board is full transparency in the form of public meetings and discussions. Over the next nine months numerous public hearings will be held to advance the public hearings policy and to encourage public meetings of advisory groups, whenever the function and/or the mission of the California Institute for Regenerative Medicine to advance therapies and medical research is not negatively impacted by such a policy.

The Independent Citizens' Oversight Committee declines petitioners' request for adoption of a regulation requiring that the Scientific and Medical Research Funding Working Group conduct all its meetings in public, consistent with the Bagley-Keene Open Meeting Act, as this regulation would also be inconsistent with applicable California law as outlined above.

7. Health & Safety Code section 125290.40 charges the Independent Citizens' Oversight Committee with overseeing the operations of the institute, and with the specific duties of developing annual and long-term strategic research and financial plans for the institute; making final decisions on research standards and grant awards in California; establishing policies regarding intellectual property rights arising from research funded by the institute; and establishing rules and guidelines for the operation of the Independent Citizens' Oversight Committee and its Working Groups (125290.40(a), (b), (c), (f) & (g).)

The California Institute for Regenerative Medicine is in the process of developing its research grant program. No research grants will be awarded, however, until the Independent Citizens' Oversight Committee adopts medical, ethical, and legal standards to govern the research. The California Institute for Regenerative Medicine's research grant program, and the standards that precede it, will be considered in open, public meetings of the Independent Citizens' Oversight Committee. The Independent Citizens' Oversight Committee therefore declines petitioners' request to adopt regulations governing this process.

It is the intent of the Independent Citizens' Oversight Committee to hold public hearings on all of the items raised by petitioners.

CONTACT PERSON

Please direct any inquiries regarding this action to Christina Olsson, Legal Associate, California Institute for Regenerative Medicine, P.O. Box 99740, Emeryville, CA 94662-9740. Phone: 510-450-2418. Fax: 510-450-2435.

AVAILABILITY OF PETITION

The petition to amend regulations is available upon request directed to the California Institute for Regenerative Medicine contact person.

MEDICAL BOARD OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

DECISION DENYING PETITION

In the Matter of the Union of
American Physicians and Dentists'
Petition to Amend
Title 16 Cal. Code Regs. 1355.35

A petition to amend Title 16 Cal. Code Regs. 1355.35 was filed on behalf of the Union of American Physicians and Dentists by Andrew J. Kahn. This petition was received by the Medical Board of California (''Board'') on February 16, 2005. The petition requests the following:

(1) That the board modify the above regulation to permit a physician to post a 500-word rebuttal when the board has posted on its website either hospital or board discipline against the physician.

(2) That the board not post on its website the fact that a physician's hospital privileges were terminated or revoked for a medical disciplinary cause or reason where it finds no cause to pursue administrative discipline against a physician whose hospital privileges were terminated or revoked, or in the alternative, that the board disclose on its website that its staff has investigated the 805 report and found no basis to impose discipline against the physician's license and that information concerning the report has been purged from the board's files.

The petition is denied for the following reasons:

Request No. 1

1. Request No. 1 is inconsistent with Business and Professions Code Section 2027(a)(7). That section requires that the appropriate disclaimers and explanatory statements that accompany the information required to be posted on the board's website ''shall be developed by the board and shall be adopted by regulation.'' This language does not contemplate individual rebuttals but rather is intended to require the board to place on its website only those disclaimers and explanations that have been adopted as regulation after completion of the notice and comment period. Further, the legislative history indicates that the purpose of such disclaimers and explanatory statements is to enable consumers to better understand the nature of the information posted on the board's website.

2. Even assuming the law contemplated inclusion of a rebuttal statement, the board does not currently have the ability in its information technology system to add in the type of statement requested.

Request No. 2

This request is both inconsistent with Business and Professions Code Sections 803.1(b)(6) and 2027(a)(6) and would result in misleading information being posted on the board's website.

First, the two code sections cited above require the board to post ''any'' hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason. The board is not free to choose which such reports it will post. It must post them all.

Second, in a license discipline case against a physician, the board must prove by clear and convincing evidence to a reasonable certainty that grounds exist to discipline a physician. This is an extremely high burden. Many times charges are supported by a preponderance of the evidence but not by clear and convincing evidence. The board is then unable to pursue disciplinary charges in cases where there is significant evidence to support a charge but that evidence does not rise to the level of clear and convincing. . In addition, the legislature has set the board's disciplinary priorities in statute (see Business and Professions Code Section 2220.05). If the revocation or termination of hospital privileges for a medical disciplinary cause or reason are based on allegations of acts that do not fit within the categories prescribed in that section, that case becomes a lower priority case and may not end up being investigated.

In these circumstances, it would be misleading for the board to post on its website a statement that it found ''no cause to pursue administrative discipline'' against a physician whose hospital privileges were terminated or revoked. That language would lead consumers to conclude that the underlying hospital charges are without merit when in fact they may well have merit but either cannot be proven by clear and convincing evidence or do not fit into the highest priorities mandated of the board by the Legislature.

The board's rulemaking authority is contained in Business and Professions Code Section 2018. Business and Professions Code Section 2027(a)(7) requires the board to adopt appropriate disclaimers and explanatory statements by regulation.

Interested persons may obtain a copy of the petition from the Medical Board of California by contacting Kevin Schunke at (916) 263-2368 or at kschunke@medbd.ca.gov or by sending a written request to the following address: Medical Board of California, 1426 Howe Avenue, Suite 92, Sacramento, California 95825.

PROPOSITION 65

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE OF INTENT TO LIST A CHEMICAL

The Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as Proposition 65), codified at Health and Safety Code section 25249.5 et seq., provides two primary mechanisms for administratively listing chemicals that are known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8(b)). A chemical may be listed under Proposition 65 when a body considered to be authoritative by the state's qualified experts has formally identified the chemical as causing cancer or reproductive toxicity. The following entities are identified as authoritative bodies for purposes of Proposition 65, as it pertains to chemicals known to cause reproductive toxicity: the U.S. Environmental Protection Agency, the International Agency for Research on Cancer solely as to transplacental carcinogenicity, the U.S. Food and Drug Administration, the National Institute for Occupational Safety and Health, and the National Toxicology Program (NTP) solely as to final reports of the NTP's Center for Evaluation of Risks to Human Reproduction. The criteria for listing chemicals through the authoritative bodies mechanism are set forth in Title 22, California Code of Regulations, Section 12306.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA), within the California Environmental Protection Agency intends to list the chemical, *2-bromopropane*, as known to the State to cause reproductive toxicity, pursuant to this administrative mechanism as provided in Health and Safety Code section 25249.8(b) and Title 22, Cal. Code of Regs., Section 12306.

Relevant information related to the possible listing of *2-bromopropane* was requested in a notice published in the *California Regulatory Notice Register* on, January 7, 2005 (Register 05, No. 1-Z). The opportunity to request a public forum was provided, but no such request was received and no forum was held. No comments were received on *2-bromopropane*. OEHHA has determined that the chemical, *2-bromopropane*, meets the criteria for listing under Title 22, Cal. Code of Regs., Section 12306, and therefore OEHHA is issuing this notice of intent to list it under Proposition 65. A document providing more detail on the basis for the listing of the chemical can be obtained from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated below, or from the OEHHA Web site at: http://www.oehha.ca.gov/. Anyone wishing to provide comments as to whether the listing of this chemical meets the criteria for listing provided in Title 22, Cal. Code of Regs., Section 12306 should send written comments in triplicate, along with any supporting documentation, by mail or by fax to:

Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

Comments may also be delivered in person or by courier to the above address. It is requested, but not required, that written comments and supporting documentation be transmitted via email addressed to: coshita@oehha.ca.gov. In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered, sent by FAX, or transmitted electronically) by 5:00 p.m. on Monday, May 2, 2005.

The following chemical has been determined by OEHHA to meet the criteria set forth in Title 22, Cal. Code of Regs., Section 12306 for listing as causing reproductive toxicity under the authoritative bodies mechanism:

Chemical	CAS No.	Reference
2-bromopropane	75-26-3	NTP-CERHR (2003)

REFERENCE

National Toxicology Program—Center for the Evaluation of Risks to Human Reproduction (NTP-CERHR, 2003). *NTP-CERHR Monograph on*

the Potential Human Reproductive and Developmental Effects of 2-Bromopropane. NIH Publication No. 04-4480. U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, NTP, Research Triangle Park, NC.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD
Heavy-Duty Diesel Engine—Chip Reflash

This action adopts the Air Resources Board's Heavy-Duty Diesel Engine Software Upgrade (Chip Reflash) program.

Title 13
California Code of Regulations
ADOPT: 2011 AMEND: 2180.1, 2181, 2184, 2185, 2186, 2192, 2194
Filed 03/21/05
Effective 03/21/05
Agency Contact:
Aron Livingston (916) 322-2884

BOARD OF EQUALIZATION
Automobile Dealers and Salesmen

This is a nonsubstantive action concerning automobile dealers and sales representatives, deleting obsolete language and making editorial changes.

Title 18
California Code of Regulations
AMEND: 1566
Filed 03/18/05
Effective 03/18/05
Agency Contact:
Joann Richmond (916) 322-1931

BOARD OF EQUALIZATION
Valuation of Possessory Interests for the Production of Hydrocarbons

This is a nonsubstantive action regarding valuation principles and procedures, repealing obsolete language and conforming regulations to statutes.

Title 18
California Code of Regulations
AMEND: 27
Filed 03/18/05
Effective 03/18/05
Agency Contact:
Joann Richmond (916) 322-1931

BOARD OF OCCUPATIONAL THERAPY
Continuing Competency

This regulatory action establishes the continuing competency requirements for occupational therapy practitioners as a condition of renewal of a license or certificate.

Title 16
California Code of Regulations
ADOPT: 4160, 4161, 4162, 4163
Filed 03/16/05
Effective 04/15/05
Agency Contact: Jeff Hanson (916) 322-3394

CALIFORNIA ENERGY COMMISSION
Appliance Efficiency

This regulatory action adopts new energy efficiency standards for specified household and commercial appliances.

Title 20
California Code of Regulations
AMEND: 1601, 1602, 1603, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608
Filed 03/16/05
Effective 04/15/05
Agency Contact: Jonathan Blees (916) 654-3953

CONTRACTORS STATE LICENSE BOARD
Fingerprint Program

Establishes procedures for applicants for licensure as a contractor or applicants for licensure as a home improvement salesperson to submit fingerprints to the Contractors State License Board.

Title 16
California Code of Regulations
ADOPT: 869.1, 869.2, 869.3, 869.4, 869.5
Filed 03/17/05
Effective 04/16/05
Agency Contact:
Ellen Gallagher (916) 255-4005

DEPARTMENT OF HEALTH SERVICES
Estate Recovery Regulations

Existing regulations provide for the recovery of payments for health care premiums and services from the estates of deceased Medi-Cal beneficiaries and recipients of such decedent's property by distribution or survival. This emergency regulatory action replaces the existing regulations with more comprehensive provisions which more specifically direct the Depart-

ment to claim against life estate interests as part of a decedent's estate. Pursuant to subdivision (a) of Welfare and Institutions Code section 14043.75, this regulatory action is exempt from review by the Office of Administrative Law and is deemed an emergency necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Title 22
California Code of Regulations
ADOPT: 50960.2, 50960.4, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.36, 50961, 50965 AMEND: 50962, 50963, 50964 REPEAL: 50960, 50961
Filed 03/23/05
Effective 03/23/05
Agency Contact:
Lynette Cordell (916) 650-6827

DEPARTMENT OF REAL ESTATE
Miscellaneous Real Estate Regulations

This action updates assorted rules and forms relating to broker disclosures in connection with a real estate loan; standard provisions that may be included by the Department in a decision on administrative adjudication, submission of fingerprints by an applicant for licensure, and completion of required courses within the time allowed by Business and Professions Code section 10153.4.

Title 10
California Code of Regulations
ADOPT: 2712 AMEND: 2835, 2840, 2840.1, 2851, 2930
Filed 03/17/05
Effective 04/16/05
Agency Contact: David B. Seals (916) 227-0789

EDUCATION AUDIT APPEALS PANEL
Supplement to Audits of K–12 LEAs—FY 2004–05

This change without regulatory effect corrects subdivision lettering in Section 19828.1.

Title 5
California Code of Regulations
AMEND: 19828.1
Filed 03/21/05
Effective 03/21/05
Agency Contact:
Carolyn Pirillo (916) 445-7745

OCCUPATIONAL SAFETY AND HEALTH (CAL-OSHA) DIVISION
Conveyance Fees

Labor Code section 7314 authorizes the Division of Occupational Safety and Health to fix and collect fees for the inspection of elevators. Effective January 1, 2003, Labor Code section 7314 was amended to authorize inspection fees for other types of conveyances. This filing is a certificate of compliance for an emergency regulatory action which amended existing section 344.20 of title 8 of the California Code of Regulations to fix fees for other types of conveyances, to increase certain of the existing fees to cover the costs the Division incurs in performing inspections, and to make other minor changes to the regulation. Subsection (d) of Labor Code section 7314 provides that any fees required pursuant to that section shall be adopted as emergency regulations and shall not be subject to review by the Office of Administrative Law.

Title 8
California Code of Regulations
AMEND: 344.30
Filed 03/16/05
Effective 03/16/05
Agency Contact:
Christopher P. Grossgart (415) 703-5080

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT
Hospital Charge Description Master Reporting

This regulatory action adopts the requirements for the reporting of hospital charges as required by the Payers' Bill of Rights of 2003.

Title 22
California Code of Regulations
ADOPT: 96000, 96005, 96010, 96015, 96020, 96025
Filed 03/23/05
Effective 04/22/05
Agency Contact:
Kenrick J. Kwong (916) 323-7681

STATE PERSONNEL BOARD
Legislative Counsel Bureau-special Examination and Appointment Program

This action concerns the Legislative Counsel Bureau's special examination and appointment program for information technology positions at its Legislative Data Center. These are exempt from the Administrative Procedure Act pursuant to Government Code sections 18211 and 18213. These regulations are submitted for filing with the Secretary of State and printing only.

Title 2
California Code of Regulations
AMEND: 549.70, 549.71, 549.72, 549.74
Filed 03/21/05
Effective 03/21/05
Agency Contact:
Elizabeth Montoya (916) 654-0842

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN NOVEMBER 3, 2004 TO MARCH 23, 2005

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

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03/21/05 AMEND: 549.70, 549.71, 549.72, 549.74
03/02/05 AMEND: 1859.73.2, 1859.145.1
02/28/05 AMEND: 1859.71.3, 1859.78.5
02/28/05 AMEND: 1859.2
02/28/05 AMEND: 1859.2
02/24/05 AMEND: 211
02/23/05 ADOPT: 1859.90.1 AMEND: 1859.2
02/15/05 AMEND: 1859.81
02/03/05 AMEND: 1859.106
02/03/05 ADOPT: 1859.78.8 AMEND: 1859.2, 1859.60, 1859.61, 1859.78.6
01/31/05 AMEND: 1859.2, 1589.33, 1859.35, 1859.77.3, 1859.82, 1859.83
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01/04/05 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
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12/31/04 ADOPT: 18229
12/31/04 AMEND: 18545
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12/06/04 AMEND: 1859.2, 1859.51
11/30/04 AMEND: Div. 8, Ch. 29, Sec. 50000
11/24/04 AMEND: 1866, 1866.1, 1866.2, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.5, 1866.5.1, 1866.7, 1866.13
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11/18/04 AMEND: 561, 561.1, 561.2, 561.4, 561.5, 561.6, 561.7, 561.8, 561.9, 561.10, 561.11, 561.12, 561.13, 561.14
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11/04/04 AMEND: 1859.71.2, 1859.78.4

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02/02/05 AMEND: 3430(b)
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11/17/04 AMEND: 1703.3
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11/10/04 AMEND: 3601(g)
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03/08/05 AMEND: 15220, 15220.1, 15220.3, 15220.4
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01/26/05 AMEND: 5144
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11/08/04 ADOPT: 1300.86

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12/27/04 ADOPT: 63-508, 63-509 AMEND: 63-034, 63-102, 63-103, 63-300, 63-301, 63-410, 63-501, 63-503, 63-504, 63-505, 63-801, 63-804
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